No. 93-5418

In The

Supreme Court of the United States

October Term, 1993

ORRIN SCOTT REED,

Petitioner,

v.

ROBERT FARLEY, Superintendent Indiana State Prison, and PAMELA CARTER, Attorney General Of Indiana,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

JOINT APPENDIX

JEROLD S. SOLOVY
JENNER & BLOCK
One IBM Plaza
Chicago, IL 60611
(312) 222-9350
Counsel for Petitioner

WAYNE E. UHL
OFFICE OF ATTORNEY GENERAL
219 State House
402 W. Washington Street
Indianapolis, IN 46204-2794
(317) 232-6333
Counsel for Respondents

Petition For Certiorari Filed July 26, 1993
Certiorari Granted November 8, 1993

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

DATE	FILINGS – PROCEEDINGS
12/15/82	Information filed Against Orrin Scott Reed for theft
12/23/82	Motion for Assistance filed and granted
02/25/83	Reed's Petition for Appointment of Counsel, dated February 23, 1983, filed
04/28/83	Bench Warrant returned showing arrest of Reed on April 27, 1983
05/09/83	Initial Hearing; Jere Humphrey to undertake representation of Reed in such capacity as may be appropriate
06/27/83	Pre-trial Hearing held; Court notes receipt of handwritten motions from Reed dated May 4, 1983, May 23, 1983, June 8, 1983, and June 20, 1983 and takes motions under advisement; trial set for September 13, 1983
06/29/83	Reed's Motion for Relief Of Violations, dated June 29, 1983, filed
07/08/83	Reed's Motion for Relief of Violations, dated July 7, 1983, filed
07/15/83	Order denying Reed's Motions
07/25/83	Reed's Petition for Relief of Violations, dated July 26, 1983, filed
08/01/83	Reed's Petition for Revision of Pre-trial Procedures and Relief of Violations, dated July 29, 1983, filed

08/01/83	Pre-trial Hearing held; trial date set for September 19, 1983
08/11/83	Reed's Petition for Subpoena For Depositions Upon Oral Examination and for Production of Documentary Evidence, dated August 10, 1983, filed
08/19/83	Reed's Motion in Limine, dated August 18, 1983, filed
08/24/83	Reed's Motion in Limine, dated August 19, 1983, filed
08/29/83	Reed's Petition for Discharge and Petition for Bond Discharge filed
09/13/83	Pre-trial Hearing held, pending motions considered
09/19/83	Pre-trial Hearing held; trial reset for October 18, 1983 due to pretrial publicity
10/18/83	Trial commences in Circuit Court of Fulton County
10/22/83	Jury returns verdict of guilty to theft and habitual offender charges
11/14/83	Circuit Court of Fulton County sentences Reed to 34 years with credit for 192 days previously served
01/14/84	Reed's Motion to Correct Errors Filed in Circuit Court of Fulton County
01/26/84	Circuit Court of Fulton County enters Order denying Motion to Correct Errors
08/15/85	Reed's Petition for Post-Conviction Relief filed in Circuit Court of Fulton County
04/07/86	Opinion and Judgment filed by the Indiana Supreme Court affirming conviction

08/26/88	Circuit Court of Fulton County denies Motion for Post-Conviction Relief
10/27/88	Reed's Motion to Correct Errors in Circuit Court filed
12/14/88	Circuit Court of Fulton County denies Motion to Correct Errors
10/16/89	Indiana Court of Appeals denies appeal of Motion to Correct Errors
04/30/90	Indiana Supreme Court denies Reed's Motion to Transfer Proceedings
05/22/90	Reed's Petition for Writ of Habeas Corpus filed in District Court for the Northern District of Indiana
09/21/90	Opinion and Judgment filed by the District Court for the Northern District of Indiana
01/19/93	Opinion and Judgment filed by the United States Court of Appeals for the Seventh Circuit
04/27/93	Rehearing and Rehearing In Banc denied by the United States Court of Appeals for the Seventh Circuit

STATE OF INDIANA	)	IN THE FULTON CIRCUIT COURT
COUNTY OF FULTON	) SS.)	1983 GENERAL TERM
STATE OF INDIANA	)	
VS.	)	CAUSE NO.
O. SCOTT REED	)	S-82-53 & S-82-55

EXHIBIT "A"

Agreement on Detainers: Form V

Five copies. Signed copies must be sent to the prisoner and to the official who has the prisoner in custody. A copy should be sent to the Agreement Administrator of the state which has the prisoner incarcerated. Copies should be retained by the person filing the request and the judge who signs the request.

REQUEST FOR TEMPORARY CUSTODY

Thomas F. Keohane, Jr., Warden — U.S. Penitentiary
(Warden-Superintendent-Director) — (Institution)

Terre Haute, Indiana 47808
(address)

Please be advised that Orrin Scott Reed, who is presently an inmate of your institution, is under [indictment] [information] [complaint] in the Fulton Circuit Court, of which I
(jurisdiction)

am the Prosecuting Attorney inmate is therein charged
(title of prosecuting officer)
with the [offense] [offenses] enumerated below:

Offense

Theft, Fulton Circuit Court Cause No. S-82-55

_____

_____

I propose to bring this person to trial on this ~~[indictment]~~ [information] ~~[complaint]~~ within the time specified in Article IV(c) of the Agreement.

In order that proceedings in this matter may be properly had, I hereby request temporary custody of such person pursuant to Article IV(a) of Agreement on Detainers.

I hereby agree that immediately after trial is completed in this jurisdiction I will return the prisoner directly to you or allow any jurisdiction you have designated to take temporary custody. I agree also to complete Form IX, the Notice of Disposition of a Detainer, immediately after trial.

Signed: /s/ Richard A. Brown

Title: Prosecuting Attorney, Fulton County, IN

I hereby certify that the person whose signature appears above is an appropriate officer within the meaning of Article IV (a) and that the facts recited in this request for temporary custody are correct and that having duly recorded said request I hereby transmit it for action in

accordance with its terms and the provisions of the Agreement on Detainers.

DATED: March 3, 1983

Signed: /s/ Douglas B. Morton
~~(Judge)~~
Judge of the Fulton
Circuit Court

* * *

PETITION FOR WRIT OF HABEAS CORPUS,
AND DISMISSAL OF CHARGES
[Dated] May 4, 1983
(Caption Omitted In Printing)

Comes now, O. Scott Reed, defendant, and moves the court to enter an order dismissing the pending charges under Cause #S-82-55 for the following reasons:

That petitioner was in fact transferred from the U.S. penitentiary, a Federal jurisdiction, under Federal Authority for the purpose of hearings, and possible trial on the above cause, to the Fulton County Jail, Rochester, Indiana.

That this transfer did in fact take place on April 27, 1983.

That this transfer was in fact unlawful, and in fact contrary to the authority of the Agreements on Detainers Act by which this court has ordered petitioner confined.

That petitioner has in fact been held 7 days to date, unlawfully, without any hearings, being brought before the court, or to answer petitioners request for appointment of counsel, properly filed on February 23, 1983, for relief of improper confinement, and for unlawful restrictions from legal process guaranteed by the laws of the U.S., and with no indication of any relief of these violations from the above court.

That petitioner is being restricted from his freedom to enter society, unlawfully, by the denial of proper hearings, and improper confinement, and refusal of court to appoint counsel. (See petition for appointment of counsel filed in the above court 2-23-83).

That petitioner is, and has been, restricted from proper access to legal procedures to seek relief from the above violations.

That the above court, and the prosecutor are involved in improper "Conflict of Interest" pertaining to the arrest, transfer, and confinement of petitioner, unlawfully, and against both State and Federal law.

For the above violations, petitioner requests immediate hearing before the court, dismissal of pending charges, and all other violations of petitioner removed and ordered corrected.

Petitioner has filed Forma Pauperis procedure with this Court, and has sought all proper lief [sic] before this Court in petition filed February 23, 1983.

Respectfully submitted,

/s/ O. Scott Reed

Proof of Service:

A copy is served to the above court for delivery to the office of the prosecutor.

The above is true to the best of my knowledge.

/s/ O. Scott Reed

* * *

In the Fulton Circuit Court

CAUSE NO. S-82-53 & S-82-55

(Caption Omitted In Printing)

INITIAL HEARING

BEFORE THE HONORABLE

DOUGLAS B. MORTON

May 9, 1983

APPEARANCES:

For the State of Indiana – Richard A. Brown

[2] COURT:

I have two cause numbers before me – Cause No. S-82-55 which is State of Indiana vs. O. Scott Reed as it relates to a charge of theft and S-82-53 which is an Information for Habitual Offender.

What is your age, Mr. Reed?

MR. REED:

Fifty-one.

COURT:

You were charged by Information of the offense of theft and that is a Class D felony under the laws of the State of Indiana and you've indicated to me that you have received a copy of that?

MR. REED:

Yes, I did.

COURT:

You've also been charged with the Indiana Habitual Offender statute. That is not a particular class felony, but it is an enhancement statute. Did you read your copies of those charges?

MR. REED:

They were read to me.

COURT:

You are here for initial hearing preliminary to the prosecution of the crimes charged against you. That means you will be informed of the nature of the charges against you. The statutes under which the Informations were drawn will be read to you, arrangements will be made for your representation and [3] I will at the conclusion of these proceedings enter preliminary pleas of not guilty in your behalf.

You are now in the Fulton County jail?

MR. REED:

Yes, I am.

COURT:

How long have you been there?

MR. REED:

Two weeks.

COURT:

Twelve days at this point?

MR. REED:

Yes.

COURT:

How have you been treated at the jail?

MR. REED:

The food's great . . . surprisingly so. The sheriff is extraordinarily humane. My communications are very nearly totally limited, such as with my family visiting . . . this type of thing. I won't complain about the general conditions . . . not at this time.

COURT:

You were transferred here on a writ of assistance filed with this court from the Terre Haute federal prison, is that correct?

MR. REED:

Yes, sir.

[4] COURT:

How long had you been in custody?

MR. REED:

Three years approximately.

COURT:

Three?

MR. REED:

Three years. I'd like to bring to the Court's attention the one thing that the reason I am locked up isn't because

of my sentence in Terre Haute. It is directly because of this detainer. I filed a motion with this Court last week – a writ of habeas corpus, so forth, asking for an attorney for a hearing. I would have been to a half way house in January With my mandatory release date in August of this year, I am entitled to six months half way house and the only thing that kept me from going there . . . as a matter of fact, I was in the process of being released when this detainer was dropped on me. So the sole reason I am in jail at this moment is this detainer . . . on this charge brought by this court.

COURT:

Court's don't bring charges. Prosecutors bring charges.

(Additional Court Comments Omitted In Printing)

* * *

[14] COURT:

Can you think of any attorneys locally that wouldn't have a conflict of interest in representation of them?

MR. BROWN:

Not if all (inaudible). The only thing that I knew of that Ted was involved in was just as county attorney when he was selling the old hospital and I'm not so sure that . . . I don't know what went on then . . . whether that was an adversary relationship or not. I don't think he's involved in any law suits as such.

MR. REED:

No, as it turned out there was kind of a fraud involved. I mean I was completely swindled out of money as the case turned out – by Marsha.

MR. BROWN:

But beyond that I can't think of anybody that wouldn't (inaudible) around here that would do that kind of work . . . do criminal work.

COURT:

Do you know Jere Humphrey?

MR. REED:

I don't believe so.

[15] COURT:

He's an attorney from Plymouth. I'm going to contact him. He will be the first attorney I contact. I am going to seek to appoint him to represent you in this matter. Whoever we put in is going to have some miles and so it's going to be subject to their acceptance. They'll need to know that, but. he will be the first that I contact. He may well be down within a day or two to conduct an interview of you.

That would be the time that you would talk with him also concerning your requests relating to habeas corpus and release. The initial presentation that you made concerning it indicates that you would be in a half-way house right now . . .

MR. REED:

Yes, I would.

COURT:

. . . for all purposes and I understand there is a world of difference between a prison and a half-way house.

MR. REED:

Yes, sir, there is. You're free . . . (inaudible) running around.

COURT:

No, you're not . . . for all of my purposes you are still within the custody of . . . in your case, it would be the federal government.

MR. REED:

Yes, sir.

COURT:

And therefore that is not a release. That particular argument may be subject to development and that is something you're going to have to take up with Mr. Humphrey, but it's [16] not on its face something that indicates to me that you are subject to immediate release because on its face, you have just told me that you are not subject to immediate release. You are subject to release to a half-way house.

MR. REED:

Well, my release concerns that, I believe, go anywhere I wish during the days. I check in at 11:00 at night

and stay there until morning. I work under normal employment during the day.

COURT:

I know how half-way houses work, but for the purposes that I deal with it's not a release. That's what I need to explain to you.

MR. REED:

(Inaudible) restriction of my rights though by being locked up against a certain amount of freedom.

* * *

[17] COURT:

I'll discuss with you the rights that you have in the matter. First of all, if your preliminary plea of not guilty becomes a regular plea, then we'll schedule a trial and all of the rights that we've talked about here will apply for your benefit. Do you understand that?

MR. REED:

Yes.

COURT:

On the other hand if you choose to waive all of your rights today or at any later time and enter a plea of guilty, then we won't have a trial because then you'd be admitting you did the things you're charged with. Do you understand the difference between a plea of guilty and a plea of not guilty?

MR. REED:

Yes.

COURT:

If you choose to proceed upon a plea of not guilty or if you do nothing, then this case would be set for trial as soon as possible and under our present rules that requires a case to be heard at trial within the next 140 days. Do you understand that?

MR. REED:

Yes.

[24] * * *

COURT:

Now, Mr. Reed, you believe you understand what the maximum penalty for these offenses could be?

MR. REED:

Yes, thirty-two years is it plus whatever the special circumstance?

COURT:

The Court could find aggravating circumstances and make a sentence on the theft charge for a total of four years. In addition, on the habitual offender charge you could receive a consecutive term of thirty years . . . a total of thirty-four years.

MR. REED:

Yes.

COURT:

Do you understand what the minimum penalty for this could be?

[25] MR. REED:

Well, as I understand it . . . it's a compulsory prison sentence of a year?

COURT:

No. If you are found guilty of the theft charge and it's reduced for sentencing purposes to an A Misdemeanor, then it's not a second felony conviction. It's a misdemeanor and at that point it would still be possible for you to receive a suspended sentence and probation . . . a lot of range we're talking about. . . .

MR. REED:

O.K. Yes.

COURT:

. . . . from a suspended sentence all the way to thirty-four years which is a long time.

MR. REED:

Because I would die in a prison with this long sentence.

[26] * * *

MR. REED:

O.K. I would like to ask the Court for the process in which can be worked out, I'm sure, with the sheriff in

where I may talk to witnesses and so forth myself concerning this trial and all this pre-trial motions and so forth.

COURT:

I am going to leave that for you to talk over with Mr. [27] Humphrey or whoever eventually accepts the case for you and that will be considered at an early opportunity where we'll discuss how the procedures in the case will work. I am going to enter a Not Guilty plea in your behalf at this time. I am going to select June 27 as a Omnibus date in this case. The The [sic] Omnibus date is a date from which all other dates are fixed in the case and it's probably a phrase that you are entirely unfamiliar with.

MR. REED:

Right.

COURT:

The special significance that it will have to you is that at this time I am going to schedule a pre-trial conference for 1:30 p.m. that day and I'll direct your attendance at that.

The Court is also going to enter its standard Discovery order and I'll have to mail you one because I don't have any in here. I am also going to mail one to Mr. Humphrey and in it I'm basically going to direct the State to proceed to provide its Discovery materials by June 6. I am going to direct the Defense to file its responsive Discovery materials by June 20. Pre-trial conference then will occur on the 27th. I'll have a copy of that order to you probably Wednesday or Thursday.

I'm not aware that bond is appropriate in this case, Mr. Brown. He, in fact, is still in custody with the federal authorities, is he not?

MR. BROWN:

I think – as you described it – yes.

[28] MR. REED:

I would like to bring to your attention that a bond in my opinion is appropriate . . . a feasible bond . . . in that if I can make bond, I can be released to a half-way house, seek gainful employment. Not only would it save the State an awful lot of money by me being able to attend the trial and so forth under the flag of a free person, but it would also allow me to raise certain funds that I desparately [sic] need right now for not only this case, but in order to save my . . . what little bit I got in this land out here and should a bond be posted, I would apparently be returned to the federal penitentiary and approximately two weeks later – maybe three - I would be released to a half-way house.

COURT:

Mr. Reed, I'm not going to consider bond at this time. I am going to direct the attorney working with you to make that his first order of business in presentation of this matter to me and I would anticipate hearing from him by the end of this week as to whether, in fact, there is benefit to be gained by the establishment of posting of a bond. I've heard what you've said. They've also changed the rules on me. I was a federal law clerk in 1971 and 1972 and that was not the way it worked then. If it's the way it works now, O.K. I'm not aware that they've

changed that. I'm simply going to direct the attorney that becomes involved here that this is one of the . . . not one of the but it is the first thing to look into so appropriate arrangements can be worked out here.

[29] MR. REED:

Could you make an estimate and I realize this is just an estimate probably – what month a trial would take place should a trial date be set without anyone's asking for continuances or extensions of time?

COURT:

I would guess right now . . . I would think we're talking about August, perhaps September.

MR. REED:

Again I would like to bring to your attention . . . remember my discharged date now is in August from the federal penitentiary.

COURT:

O.K.

MR. REED:

I also have a parole for September 11 . . . I think it was or September 14, but this is a game just played because they realize that my discharge date's a month or three weeks before the parole date.

COURT:

I guess I don't understand the significance of the parole date.

MR. REED:

Well, the only significance would be if for some reason I was to lose some good days, but it wasn't serious enough to revoke my parole and some method like this would be the only. . . . for instance, maybe a minor infraction where they would feel that they could take three weeks of good days and then [30] my parole date would actually become quicker than my discharge date . . . kind of a technical little thread there.

COURT:

Anything else to discuss in this case, Mr. Brown?

MR. BROWN:

No, not that I'm aware of.

COURT:

Anything else to present at this time, Mr. Reed?

MR. REED:

No, no, sir.

COURT:

O.K. Thank you.

(THAT IS ALL THE PROCEEDINGS HELD ON THIS DAY IN THIS CAUSE.)

* * *

(Court Minutes, May 9, 1983)

* * *

Defendant in Court in person and State in Court by Richard Brown, Prosecutor for initial hearing. Defendant now advised of right to counsel and request appointed counsel for purposes of advising him as he represents himself. Defendant sworn, examined and found to be indigent. The Court now appoints Jere Humphrey of Plymouth, IN to undertake representation of defendant in such capacity as may be appropriate.

Defendant advised of all rights including nature of charge and the Court now enters preliminary plea of not guilty in his behalf. The Court now selects June 27, 1983 as omnibus date and schedules this matter for pre-trial conference for 1:30 p.m., Monday, June 27, 1983.

The Court now makes its written order for discovery by parties directing State's discovery by June 6, 1983 and defense response by June 20, 1983 by its standard order as follows: (H.I.).

Possible bond discussed. It now appearing to the Court that the defendant remains in custody of federal authorities, the Court now does not establish bond in defendant's behalf subject to review after defendant's consultation with counsel.

* * *

(Court Minutes, June 6, 1983)

* * *

Comes now State and request that discovery dates be continued for one week, both as to State and defense in view of volume of material and recent vacation schedules in the prosecutor's office. Motion granted. State's discovery date now moved to June 13, 1983. Defense discovery date now moved to July 5, 1983.

* * *

In the Fulton Circuit Court

CAUSE NO. S-82-53 & S-82-55

(Caption Omitted In Printing)

PRE-TRIAL CONFERENCE

BEFORE THE HONORABLE

DOUGLAS B. MORTON

June 27, 1983

APPEARANCES:

For the State of Indiana – Richard A. Brown

[2] COURT:

The Cause number is S-82-53 and S-82-55, State of Indiana vs. O. Scott Reed.

Mr. Reed, we will be discussing several things today, including the various motions that you filed under the title of Motion for Relief of Violations. The first one of those shows as being submitted for Cause No. S-82-55 only. The others more correctly reflect filing in both cases.

I detected a modification in the language of the motions that leads me to ask a couple of questions concerning your relationship with Attorney Humphrey. In late May there were references to . . . and your first filing in June . . . there were references to his not being available to you and not communicating with you. I then noted in filed when Mr. Brown reported that he had completed Discovery that he'd provided a certificate of service to Mr. Humphrey, but none to you. Then in your most recent filing of Motion for Relief dated June 20, you

made little or no reference to the unavailability to you of Attorney Humphrey. I then note that when we scheduled today's hearing that he is on vacation for two weeks and he's not here.

MR. REED:

Right.

COURT:

O.K. The first question I have for you – is it still your desire to represent yourself and to not have him as your attorney, but only available for counseling?

[3] MR. REED:

Yes, I believe it's essential in that first of all, I have no way of contacting the man. I don't even have his address which poses a problem.

COURT:

O.K. We can cure that simply enough.

MR. REED:

And I tried for approximately five weeks to get ahold of the gentleman and I was unable to and he did come by last week to inform me that he would be gone on vacation which doesn't really add much to my preparation for defense . . . you know.

COURT:

Has he provided you copies of the Discovery materials that Attorney Brown provided for him?

MR. REED:

No, sir, he has not provided anything whatsoever to aid in my case at all.

COURT:

You haven't seen any of the Discovery materials provided by the Sate?

MR. REED:

No, absolutely nothing. I have had nothing whatsoever to aid me in my procedure here. I've asked him for several things, but he just declined to do anything at all so far.

COURT:

I'm not exactly sure how to phrase the next question because I'm not sure you'd recognize the differences, but let's try it anyway. I indicated to him at the time of the appoint-[4]ment that as I understood you at that time, you desired to represent yourself and that his role would be an advisory role only.

MR. REED:

Basically, yes.

COURT:

His participation thus far has seemed to me to have been more in the nature of acting as counsel or acting as counsel would have instead of being available for advice. Do you think he understands that you intend to proceed as your own attorney and he simply be available to you?

MR. REED:

Well, I actually showed him the court minutes . . . I think you are aware how it's written in there . . .

COURT:

I don't recall now, but I tried to say it out loud.

MR. REED:

It says basically that I would represent myself with his assistance, you know, and I explained this very thoroughly to him and when I first seen him . . . I think it was the day after my appointment, I gave him a list of about twelve motions that I wanted him to file and some of them have to be filed in a certain sequence as the violations of the detainer act that that has to be done first because the federal courts have ruled that in order for it to be a violation it has to be filed properly – as I think you will recall – when I first came in here about how I didn't want to enter a plea until certain motions were filed?

[5] COURT:

Uh-huh.

MR. REED:

Because the courts have used this to get around certain aspects in this case in some of the court rulings and I'm trying to eliminate a technicality . . . you know, forcing the issue aside and that was one of the first things I brought up to Mr. Humphrey is that I definitely wanted him to file first of all. . . .

COURT:

He can't file them if he's not representing you.

MR. REED:

Well, I gave him a copy and asked him to enter it into the court records. . . .

COURT:

He can't. He can be available to you for advising you as to how to proceed or he can be your lawyer. If you're going to make him your lawyer, he can file the stuff, but if you're acting as your own attorney, he can't file things in your behalf. He can give you advice period.

MR. REED:

Well, so far that hasn't worked out. . . .

COURT:

O.K. All right, but I want you to understand that distinction. If you're going to get that stuff done, if you're going to represent yourself, you're going to do it yourself. I think I hear you, but it's not a for some purposes he's a lawyer and for some purposes, he's only giving me advise [sic]. It's [6] either one or the other.

MR. REED:

Well, so far it hasn't worked out either way in all honesty. I asked . . . well, actually the way it happened . . . I asked him . . . I gave him a copy of the stuff relating to the Detainer Act that was filed in federal court where I demanded my thirty day hearing. You know, I filed this both with the warden which happened to be the

representative of the U.S. Attorney General and I also filed in federal court requesting my thirty day hearing prior to transfer to the State of Indiana, as per the Detainer Act. The penitentiary stated that they were not actually aware that the State was going to come down and pick me up at this particular time because they were supposed to be notified ahead of time – not only when they were coming, but who was coming and this was supposedly to be approved in advance and this wasn't done.

So when they did come – they just showed up that day – they merely turned me over to them which happened to be a direct violation of the Detainer Act and I would like to submit – first of all, before we go any further, copies of the Detainer Act that is presently filed in the case where I demanded these rights – the first thing on the agenda because this is vitally important – the way the federal courts have been ruling on it.

COURT:

You're suggesting that you need to make a motion on the record before we go any further concerning violation of the Detainer Act?

MR. REED:

Yes, definitely. That has to be the very first thing. This is vitally important.

[7] COURT:

Do you have anything in writing that you could submit or should I . . . ?

MR. REED:

Yes, I do as a matter of fact. One of the biggest problems . . . and again I am surely not trying to inconvenience the Court and I don't want any misunderstanding that there is some kind of hostility against the Court or the Prosecutor's office because this certainly isn't true as a matter of fact. If I thought there was I'd be screaming for a change of venue and this is the last thing in all honesty that I want, but I'm working under and I think your Honor would recognize this . . . a tremendous handicap. I am pinned in this jail. I have no legal facilities. I don't have any means of making copies technically and when I would have means I would have to actually run through the law which would be a violation of the law in itself. You know, my attorney . . . uh . . . conflict and witness . . . whatever.

COURT:

Mr. Brown, he's got a copy of a motion under the Detainer Act that he wants (inaudible) to file at this time.

MR. REED:

Your Honor, if you would like I'd give this to the Court and the only other copy I have. . . .

MR. BROWN:

These are the same?

MR. REED:

Yeah, they're all identical. They are photocopies. The [8] only other copy that I do have is the copy that Mr. Humphrey has.

COURT:

Why is it important for you to file this . . . a copy of this in this case?

MR. REED:

Well, because the federal courts have ruled in several cases that if I do not file it in here and file it first and properly, then I waive all these rights. I don't have the case law other than some of it is outlined in that, but the case law is quite specific on this . . . where they're reversing the cases (inaudible) as it pertains to this violation.

COURT:

All right. Mr. Reed, is there anything further that you need to make a record of today or do you need some sort of ruling by the Court relating to this motion before you do anything else?

MR. REED:

No, I don't think there is any necessity for you to rule on that right at this time.

* * *

[16] COURT:

We need to select a trial date in this matter also. That was one of the major reasons for having a pre-trial conference scheduled. Mr. Brown, we talked about a substantial range of subjects here. I don't myself understand why a copy of a Detainer Act Motion needs to be made of record in this case. I'm going to be treating his submission of that as a motion in this case orally made with a

supplement of a copy of his submitted document. I believe most of the other things that he's indicated today except for the request for the Manning transcript and a request concerning communication with his attorney are discussed in his various filings and motions for relief.

Let's talk about the detainer request first. Do you have any comment concerning that file or any suggestion as to how to handle it?

MR. BROWN:

I would not comment. I think there would be a dispute as to the allegations made. I wouldn't comment beyond that. That would be the subject of a hearing. Is that in the nature of a Motion to Dismiss? I'm not real sure I understand really what it is we're talking about. I don't know what else it would be I guess. Is that what we're looking toward?

MR. REED:

Yes, it definitely is.

MR. BROWN:

The only comment I would have is I think – again – if you want to have a separate hearing on that, that's fine with me. [17] I think we've complied because I had to get in . . . I'd never heard of this thing before and I had to get into it frankly to get get [sic] him up here and would not do this out of the blue. I don't think even if it was determined that he was here improperly though, that it would in any way effect the dismissal of the charges, it would be no different than – as an example . . . an illegal arrest does not effect the validity of the charge . . . that is, the basis to charge. We may have to release him or

something like that. If that's what we're looking at, that may be a different issue, but perhaps it's more narrowly defined as being released back to the federal authorities . . . I don't know. It doesn't seem to me that it would be any basis even if he was correct on all points for dismissal. Possibly some transfer in detention or something. Beyond that I guess I don't have any particular comment on that issue.

* * *

[27] COURT:

Mr. Brown, have you given any thought to length of trial?

MR. BROWN:

Not specifically. There is going to be a substantial number of witnesses. I would think at least four days, possibly more than that depending on. . . .

[28] COURT:

Are you talking about the State's presentation? You say a substantial number of witnesses?

MR. BROWN:

Yes, I've listed sixteen witnesses in the Notice of Discovery, the record of Discovery and I'm sure I won't call all of those, but it [sic] gonna take probably . . . it's the type of case that involves a drawn-out bits and pieces of, you know . . . it takes a lot of people to get the whole thing together and it could take three days of trial time, I think, possibly four days to put on the State's case depending on how it goes. It's hard for me to predict. I

would think it would take three days to put the State's case on. I'd hate to say any less than that.

COURT:

Are you anticipating jury?

MR. BROWN:

I was, yes. I was operating on that assumption.

COURT:

Mr. Reed, you are anticipating a jury?

MR. REED:

Yes, sir, I definitely am.

COURT:

Well, you haven't seen what the State has yet, so discussion of possible length of the State's portion of the case would be difficult for you. You say you are expecting. . . . ?

MR. REED:

Fifteen witnesses possibly.

[29] COURT:

On average how long will each of them have to tell their tale?

MR. REED:

Well, I would imagine there will be . . . I really couldn't say . . . maybe three days. Some of them will be kinda involved. I have some of the same thing. I have to show a course of events here by myself in a certain

fashion because not only is it somewhat circumstantial . . . some of it would just be . . . uh . . . would just be an average person's intelligence to access the overall judgment on a testimony. You know, it just couldn't be cut too short because you couldn't really evaluate the whole picture from just a few yes or no questions. There is a lot of conspiracy involved here and I will have to bring all of this conspiracy to light, too, in one way or another. It's kinda important.

COURT:

All right, the entry for today will reflect first of all that we met and discussed these matters in pre-trial conference and that your motion concerning the Detainer Act was filed and taken under advisement. The Motion for Relief of Violations remains under advisement as to issues of witness and out-of-state witness preparation, availability of legal materials and I anticipate . . . frankly, what I'm going to do is sit down and read as much law as I can find on the entire issue – when the defendant can represent himself and what the State needs to provide under those circumstances.

[30] COURT:

It occurs to me that Mr. Brown's arguing that the Court's initial ruling and appointment of Mr. Humphrey was incorrect and . . . at least under the circumstances that he was appointed. and that frankly is a possibility. It could be that that was all phrased . . . at least phrased wrong because . . . well, not because anything . . . I'm just going to go back and put down a statement and I hope to have this by the end of the week – as to what his responsibilities entail and then direct comments as to how we

will proceed with such things as witness availability to you, et cetera.

In any event, the entry for today will reflect that that all remains under advisement. I am going to note that Discovery materials provided to Attorney Humphrey have not been made available to the Defendant individually and that the State is by the conclusion of Wednesday of this week to have provided a copy of those Discovery materials to the Defendant individually at the jail. That will require that by July 18. The Defendant will have filed his Discover response outlining – did you ever get a copy of that Discovery motion?

MR. REED:

Yes, I did.

COURT:

O.K. . . . outlining the things that you're to respond with.

MR. REED:

Yes, sir.

[31] COURT:

So your filing date will be by then. I'm going to tentatively select September 13 as trial date and I anticipate six days at least for trial. I may very well hold two weeks. I recognize that we've been dealing with an August release date for you, Mr. Scott. The calendar is in such a condition that I do not have that kind of time available until the second week of September and then I've two weeks together that I can devote as much as is required for this.

The trial is presently anticipated to be to a jury. Any proposed jury instructions – preliminary or final – should be made available not later than September 9. For what it's worth, Mr. Reed, I am aware of the limited nature of the law books that are available to you. I am also aware, however, that the entire criminal code is available to you It's (blank space) 35 – the green books that they have over there. There's no recitation of case law in them, but you do have available at the sheriff's department the statutes of the State.

MR. REED:

Your Honor?

COURT:

Hold the thought a moment. Finally – I'm going to also direct, Mr. Reed, that you file by July 18 any other preliminary motions that you may have – specifically including any request that you would have for documentary materials, such as the Manning transcript. Let's use that as an example. I was the presiding judge at the trial. If you're going to make [32] a request for a document such as that, you'll need to make references as to why it's necessary. If you believe there is evidence, for instance, in the transcript that would tend to show your innocence, some reference to the kind of evidence that you are looking to there will need to be made. That wasn't obvious to me on its face, and just because you'd like to have one isn't enough. You know that.

MR. REED:

No, sir, I know that.

COURT:

You know that.

MR. REED:

I'll be glad to give that to you.

COURT:

But you'll need to with some specificity indicate why you need those things. O.K. I think I'm done.

MR. BROWN:

I'm sorry, your Honor, did you indicate a deadline for pre-trial motions?

MR. REED:

No, not yet.

COURT:

To him.

MR. BROWN:

Yeah.

COURT:

Why, do you have . . . I'm sorry I hadn't anticipated any pre-trial motions from you?

[33] MR. BROWN:

No, was there a date? I missed the date.

MR. REED:

July 18.

COURT:

July 18 – the same day he is to respond to Discovery.

MR. REED:

I can keep track of that. Everything happens on my birthday. I was sentenced on my birthday as a matter of fact – the last time! Just ain't my day I think. A couple of things I'd like to bring up – one: September 13 as a trial date . . . now if everything should go wrong on my releasing . . . I would like to bring to your attention that my parole date is September 14 which is the very next day which could complicate several things involving the federal authorities . . . if – for some reason – they should decide to withhold by good days because I'm here in jail. They do some strange things in a Federal records office and the only way you can get it offset, you have to take it to Federal court and fight it for six months, but my parole date is the 14th . Of course, I should be released some two weeks before that on mandatory release date. They do some strange things though.

COURT:

O.K.

MR. REED:

Another think I would like to ask – on that Manning transcript, could I make that orally or would you prefer it in writing?

[34] COURT:

I want it in writing.

MR. REED:

O.K. I can do that.

COURT:

I read better than I listen.

* * *

(Court Minutes, June 27, 1983)

* * *

The Court now notes that it has received hand written motions from the defendant dated May 4, 1983, May 23, 1983, June 8, 1983 and June 20, 1983, the first of which is entitled Petition for Writ of Habeas Corpus and Dismissal of Charges and the last three of which are entitled Motion for Relief of Violation. The Court now denies Petition for Writ of Habeas Corpus and Dismissal Charges.

Pre-trial conference held and nature of cause discussed. Defendant now submits oral motion for dismissal for violation of Federal Detainer Act and submits in writing copies of motions submitted in Federal Case TH 83-69-C in the Southern District of Indiana. Motion taken under advisement.

Arguments heard upon motion for relief violations and motion taken under advisement for court determination of appropriate method for proceeding. The Court is now informed that the State produced discovery but made such discovery available entirely to attorney Jere Humphrey and that none of such discovery available entirely to attorney Jere Humphrey and that none of such materials were forwarded to O. Scott Reed. The Court now directs the delivery of all such materials to O. Scott Reed. The court now directs the delivery of all such materials to O. Scott Reed by Wednesday, June 29, 1983. The court further directs that the defendant responde [sic] to discovery by Monday, July 18, 1983. The Court further directs that any other preliminary motions be submitted by that time.

Cause now set for six day trial by jury to commence at 9:30 a.m. Tuesday, September 13, 1983. The Court directs that all proposed preliminary and final instructions be submitted not later than Friday, September 9, 1983.

* * *

MOTION FOR RELIEF OF VIOLATIONS

[Dated] June 20, 1983
[Filed 6/27/83]
(Caption Omitted In Printing)

Comes now, O. Scott Reed, and files for the *fourth time* (see motions filed 5-4-83, 5-23-83, 6-8-83) a motion for relief of violations imposed on petitioners right to a proper defense, Equal Rights protection, contact with witnesses, contact with attorney, access to legal facilities, allowing office of prosecutor to disregard Court orders (see "Discovery Order" amendmented [sic] 6-6-83), illegal jail restraints (see 326 F. Supp. 1735 – and other above motions) and many other violations completely violating petitioners right to pretrial motions, and a fair trail [sic], proper conference with witnesses etc.

Petitioner requests a prompt hearing before this Court to prove these allegations, request oral argument, relief of violations, and enter these motions, and requests, into the court record.

VIOLATIONS

* * *

2. That illegal confinement at the county jail has restricted petitioner from contact with court witnesses, appointed attorney, restricted pretrial motions, proper defense preparations, confidential attorney-witness visiting, proper phone access, etc. in violation of U.S. vs. Reed, 658 F.2d 630-631 (caselaw), 326 F. Supp. 1375 (pretrial) and decisions listed in prior motions.

* * *

5. That petitioner be permitted to file for dismissal on violations of Agreement of Detainers Act, as shown in motion filed 5-4-83, where petitioner was illegally transferred to the State of Indiana and is being held in violation of Agreement of Detainers Act, without requested hearings, and without legal recourse.

6. That petitioner was held for 12 days without hearing before the court, and then only after having filed Motion for Habeas Corpus (see 5-4-83). That petitioner requests this being read into the court record.

7. That petitioner is eligible for release to Community Treatment Center from Federal Authorities and therefore Writ of Habeas Corpus is proper and should have been heard and petitioner released on bond. This is also a Equal Rights Violation and requires a prompt hearing before this Court.

8. That petitioner requests dismissal of charges and prompt return to Federal Authorities for release as outlined in Agreement on Detainers Act. (See motion 5-4-83 for details.)

9. That petitioner requests legal facilities be made available as he is his own attorney and restriction of legal facilities is violation of law, and equal rights, and confinement laws. (See motions 5-4-83 – 5-23-83 – 6-8-83.)

10. That the court, by refusing to correct violations, is causing delays in trial dates, as petitioner is unable to prepare for trial, further causing illegal confinement, without allowing bond, in violation of the above laws, and violation of equal rights, to call witnesses, and prepare my defense. My confinement is not cause for the

above violations, except for security only, and these violations in no way involve security. (See paragraph #2, above for case law.)

* * *

Respectfully submitted,

/s/ O. Scott Reed

Clerk of the Court will please submit proper copies of this motion to all parties involved as I have no legal facilities or means of proper motions.

* * *

MOTION FOR RELIEF OF VIOLATIONS

[Dated] June 29, 1983
[Filed 6/29/83]
(Caption Omitted In Printing)

Comes now, O. Scott Reed, and requests relief of the following violations.

1. Petitioner is a Federal prisoner, under temporary state custody, and remains under control of the Federal Government at all times except for prosecution. Detainer Act – Article 5(D).

2. That the State of Indiana must, by signed agreement, be responsible for the: "caring for" and "shall also pay all costs" (Detainer Act – Article 5(H)) of the temporary custody of petitioner as per Federal Law and policy of the U.S. Attorney or his agents.

3. That petitioner is under constent [sic] Doctors care because of high blood presure [sic], (taken to local hospital once so far) and requests constant Doctor visitation and medical care, Dental care, and such care for as "hair cuts" and hygiene supplies as set forth by the U.S. Attorney or/and his agents, and agreed to by the State of Indiana (Detainer Act - Article 5(H)).

4. That petitioner requests the above listed "care" to be furnished, cost prepaid, by the State of Indiana, or County of Fulton, as per agreement, and that the court order such hygiene as hair cuts, given on a regular basis as per Federal policy, and such violations to cease, and regular doctor care as outlined in Federal law and policy, and all other relief in violation of law, and equal rights protection, violations of confinement (see prior motions)

and phone restrictions removed, as per Federal policy, and equal rights protection.

Respectfully submitted,

/s/ O. Scott Reed

The Clerk will please submit copies to all proper parties as I have no means of copies, or legal facilities available.

Thank you.

* * *

PETITION FOR RELIEF OF VIOLATIONS OF STATE LAW, LOCAL CONFINEMENT, FEDERAL LAW, AND MOTION TO DISMISS ALL CHARGES

[Dated] July 7, 1983
[Filed 7/8/83]
(Caption Omitted In Printing)

Comes now, O. Scott Reed, representing himself as counsel for defense, and requests relief for the *Fifth Time*, relief of the following violations. (See motions and minutes of the court: 5-4-83, 5-23-83, 6-8-83, 6-20-83, 6-28-83, 6-29-83).

1. That petitioner is confined in the County Jail, under above cause, and is being held in violation of Indiana State law, Federal law, United States Supreme Court Caselaw, and United States Court of Appeals case law. (See motions filed above paragraph.)

2. That petitioner has been confined for about 2½ months (since April 27, 1983) under the above violations, with the above motions for relief having been filed in above court, and without any relief of said violations, in any form, or by help of any counsel.

3. That on June 27, 1983, a pre-trial conference was held before this Court whereas the above motions, violations of law were discussed, and discovery and trial date was set, and as of this time there has been no relief of violations.

4. The violations still remain as follows:

A. Violations of Agreement on Detainers Act.

* * *

D. Violations of Equal Rights Protection: and law.

1. Equal rights to defense – no talking with witnesses.

2. Equal rights with prosecutor – legal facilities, phone calls restricted, availability of investigation, and law books, means to call witnesses, at reasonable hours without "mandatory collect calls" restriction.

3. Relief of one (1) collect call per week restriction.

4. Relief of 15 minute weekly visit. (All persons must visit together under word by word censorship.

E. Refusal to provide means of talking to witnesses.

* * *

H. Restrictions of visiting with witnesses during reasonable weekly hours.

* * *

L. Confinement is in violation of law: 326 F. 1375, and petitioner requests all restrictions not subject to security be removed.

M. That petitioner requests dismissal of charges due to irrepairable [sic] damage created by these violations.

N. That petitioner requests appearance before the court for arguments & entrance into the record.

Respectfully submitted,

/s/ O. Scott Reed

The Clerk will please submit copies to all parties as petitioner has no facilities to do so.

Thank you.

* * *

In the Fulton Circuit Court

CAUSE NUMBER: S-82-53 and S-82-55

(Caption Omitted In Printing)

ORDER

The above entitled cause is before the Court upon the various proceedings held herein to determine appropriate procedures for defendant's *pro se* representation including his five motions for "Relief from Violations" and the oral presentation made in Court at pre-trial conference herein on June 27, 1983. Now the Court hereby makes the following rulings:

1. That upon defendant's motion for dismissal or "relief from violations" pursuant to the Detainer's Act, the Court does now deny the said motions; defendant has failed to provide any showing of the terms of the Act relied upon or the particular acts of the State to which he objects. There appearing on its face no violation of such Act, the Court does now rule accordingly.

2. The Court has previously determined that defendant has sought to proceed *pro se*. The Court has appointed attorney Jere Humphrey in this cause to assist the defendant and the Court does now determine that such appointment should be on the basis that attorney Humphrey is "stand by" counsel for defendant. For so long as the defendant seeks to proceed *pro se* or until further order of Court, the duties of attorney Humphrey will be limited to:

(a) the aiding of the defendant to provide legal materials or alternative sources of legal knowledge for his benefit,

(b) to assure that he has access to sufficient writing materials that he may file necessary motions and other pleadings, and

(c) he shall be available to participate in this cause should the determination for self representation be terminated.

3. The majority of defendant's complaints in his various motions for "relief from violations" relate to what he perceives to be in appropriate limitations upon his ability to prepare his defense because he is a pre-trial detainee in the Fulton County jail. It has been stated in *People v. Rice*, (1978) 579 P 2nd 647, Cert denied 99 S. Ct. 261 as follows:

> It is reasonably clear that defendant's right to defend himself encompasses access to law librarys [sic] or alternative sources of legal knowledge. However, as a pre-trial detainee, the defendant cannot realistically expect to have all of his desires relative to the preparation of his case satisfied upon demand. Nor is it the trial courts duty to remove all of the obstacles from the path of the defendant who has elected to represent himself. . . . After the defendant chose to represent himself, he had standby counsel available . . . he was at no time deprived of the access of a law library or alternative source of legal knowledge since he had the functional equivalent of a law library in the form of standby counsel and there is no violation of defendant's constitutional right to defend himself.

In *Wells v. State*, (1978) 358 So 2nd 1113, the Court held that when a defendant rejected a public defender's services, he was not entitled to access to law books.

There is no reason to believe that this defendant should be treated differently at the jail than any other defendant. He may elect to conduct his own defense if he wishes but he will do so within the limitations of the jail rules in which he is well versed. Should he elect to not proceed in that fashion, then the court will grant his request for appointment of counsel.

4. The Court does now determine the following specific course of procedure in this case:

(a) the Court believes defendant to have reasonable access to legal knowledge through its appointment of standby counsel; however, the Court will provide in addition, (i) that the jail staff should provide defendant access to one of the jail's statute books, the book to be selected by defendant and (ii) access to two volumes from the Fulton County Law Library per court day, each day's volumes to be returned before further volumes are provided. Naturally upon the defacement or damage of any law books, thus provided, the Court will immediately cease providing such books to the said defendant;

(b) witness interviews may be conducted by defendant by properly scheduled deposition;

(c) the Court is aware of no reason for extension of additional telephone privileges to the defendant other than those normally provided to inmates; he remains free to contact his standby attorney as necessary;

5. The Court has previously described for the defendant the dangers inherent to him of seeking to proceed *pro se* in a case, illegible being specifically:

(a) that he will be held to the same standards as any trained legal counsel

(b) that he will be required to comply with all relevant rules of conduct in the Court room and in the legal proceeding

(c) that the Court has no duty to inform him of any rules either procedural or substantive pertaining to his case particularly including steps precedent to presentation of certain defenses, steps necessary to preserve issues of appellate review or any other procedural or substantive rules; the Court's duties are limited to the explanation to the defendant of the appropriate constitutional rights of all defendants.

6. It has become apparent to the Court through pre-trial proceedings this far held, that the defendant will be incapable of presenting the kind of defense which he has contemplated to date, because of his incarceration. The Court urges and strongly recommends for the defendant's benefit that he withdraw his request to proceed *pro se* and that he instead determine to proceed with the assistance of counsel. The Court however, at present, believes defendant to be competent to elect to proceed *pro se*, and the Court will not make that determination for him.

7. This cause now set for further pre-trial proceedings for 2:30 p.m., Monday, July 25, 1983 at which time any pending motions will be considered, status of case

will be reviewed and the Court will inquire in depth of the defendant of his present determination to proceed *pro se*.

DATED this 15th day of July, 1983.

/s/ Douglas B. Morton
Douglas B. Morton, Judge
Fulton Circuit Court

* * *

PETITION FOR RELIEF OF VIOLATIONS

[Dated] July 26, 1983
[Filed 7/25/83]
(Caption Omitted In Printing)

Comes now, O. Scott Reed, representing himself as counsel for defense, and requests relief for the *Sixth* (6) time, of violations filed before this court. (See motions and minutes of Court: 5-4-83, 5-23-83, 6-8-83, 6-20-83, 6-28-83, 6-29-83, 7-7-83, 7-18-83.)

1. That petitioner is confined in the County Jail, under above cause, and suffering from all of the above violations listed, as complained of for approximately *three* (3) months without any relief.

2. That petitioner lists violations seeking relief of illegal confinement, restraint of defense preparation, restraint from legal facilities and law books, restraint from witness contact, violations of Equal Rights protection, noncompliance of requested witness subpoenas, and all other listed petitions for relief of violations.

* * *

4. That petitioner requests trial be held within the legal guidelines of the Agreement on Detainer Act, signed by the State of Indiana, and by which the State of Indiana is in violation, (see first motion filed before court) and is forcing petitioner to be tried beyond the limits as set forth in the Agreement on Detainer Act. Petitioner has filed (oral motion and documentation before court) request for dismissal of charges, which is pending, and requests no extension of time be granted beyond those guidelines. The 3 month delay rests solely

in the court and irrepairable [sic] damage has resulted, and the charges should be dismissed for the above reasons and violations.

5. That petitioner has been appointed counsel to assist in defense preparation, However, counsel is unable to aid in defense for the following reasons: That in the pre-trial hearing before the court (counsel not present) petitioner requested motions to be filed for relief of violations. The court ruled against this oral motion. (See court pretrial hearing transcript.) Further, the court has failed to issue requested subpoenas for witness interview. (See motions above listed.) The court has failed to allow phone conversations between (without collect one call per week) petitioner and counsel. (See above motions for relief of violations.) Also: The pre-cost factor discussed at the pre-trial hearing has yet to be resolved. Petitioner is restricted from counsel assitance [sic] in bringing witnesses by restriction of funds. (See pre-trial transcript for oral motions for funds – and motions of equal Rights violations – prosecutor has available funds for investigation plus unlimited legal assistance, e.i., [sic] F.B.I., State Police, County Police, etc.) Petitioner has be [sic] denied all of these facilities and has been denied all requested alternatives.

* * *

7. Petitioner once again requests proper *care* in County Jail, as per Agreement on Detainer Act. (See prior motions filed.) The care provides for health, hygiene care, proper resting facilities, exercise, hair cuts. The above violations have caused illness, illegal confinement and force petitioner to be presented in "seedy" "bum-like"

appearance before general public and in court appearances. Petitioner once again requests proper hygiene care, e.i. [sic] hair cuts, pillows, sheets, exercise, etc., which is both violation of law (326 F. Supp. 1375 – motion filed 6-20-83) and equal rights protection, and violation of Agreement on Detainer Act.

8. That improper Jail restrictions do, and have prevented petitioner from filing and researching proper motions for other pending legal process; e.i. [sic] U.S. Tax Case, illegal liens placed on property, filing proper appeal on property forclosure [sic], that confinement has caused land forclosure [sic] directly, and prevented, directly, sale of property to buyers. That such restrictions, and violations, has, in fact, remained in force until property has been disposed of, and recourse to recover losses placed beyond available time limits by law – including recovery of stolen property. Petitioner seeks relief from these violations, and Court order directing the time limits extended in which to file for recovery of these violations.

* * *

Respectfully submitted,

/s/ O. Scott Reed

mailed 7-25-83

Clerk of the Court,

Will you please prepare copies of this motion and deliver them by mail to all persons involved in case, as per court instructions, as I have absolutely no legal facilities or means to copy or transmit legal copies.

Copy to: Jere Humphrey, Plymouth, Indiana counsel.

* * *

IN THE FULTON CIRCUIT COURT

CAUSE NO. S-82-53 & S-82-55

(Caption Omitted In Printing)

PRE-TRIAL CONFERENCE

BEFORE THE HONORABLE
DOUGLAS B. MORTON
August 1, 1983

APPEARANCES:

For the State of Indiana - Richard A. Brown

[2] COURT:

These are Cause No. S-82-53 and S-82-55, State of Indiana vs. O. Scott Reed. The last time we were in court I indicated to Mr. Reed that we would be continuing this matter until 9:00 Friday morning which would have been the 29th day of July and as a matter of fact, we had a jury out until 2:10 or something like that that morning and the Court did not convene that day until 1:00 p.m. and we did not get a chance to meet with Mr. Reed that day. This being the next court day we just set it over until now. And nobody told you that I suspect, so that's what occurred and that's why we're a day late.

While we were in court rather than address the issues raised upon the Petition for Relief of Violations, the Court instead determined that Mr. Reed had not yet received a copy of its ruling dated July 15 relating to pro se representation. That was provided and we simply continued the matter up to today.

Mr. Reed, since our last time in court I gather you have now had an opportunity to read through that order?

MR. REED:

Yes, sir, I have, your Honor.

COURT:

Probably more than once.

MR. REED:

Yes. Several times.

COURT:

I think it clear at least to me that it is substantially [3] at odds with what you had anticipated to be your ability to represent yourself and the steps you would be in a position to take should you represent yourself. I gleen [sic] that essentially from the language that I outlined in Paragraph 4 as to the steps you will be entitled to take while at the jail in preparing your own representation and frankly and more dramatically from your comments while we've been in the courtroom concerning the things you would like to do and the tenor of your various handwritten petitions and motions outlining the steps you would like to take.

The thing I need to determine from you, Mr. Reed, is whether, in fact, in view of what I propose . . . the methods that I propose to proceed upon and what, quite frankly, will be limitations upon how you had intended to proceed . . . whether or not you intend to continue to represent yourself or whether you would instead desire to change your request to become a request for court appointed counsel. That is what I am going to need to determine today.

MR. REED:

Yes, I did look it over several times and I thought it over and I still feel that I cannot possibly let another attorney defend me without just being hopelessly overwhelmed in the court, I guess. There are just so many items of evidence that a lawyer would not be able to get in this case because the case is a special case. We're dealing with almost entirely criminals. I think the Court from experience would be aware of the fact that generally this type of person will not confide in anyone unless it would be a direct plea from [4] one of the defendants and much less an attorney. That would be one of my major problems.

Another one is that due to the complications involved in this thing that I would be the only one that actually knows the intricacy involved and the questions that have to be asked to bring the evidence out. I honestly believe this. I am certainly not trying to be hostile to the Court.

COURT:

Mr. Reed, I believe you have a right to represent yourself. I want you to know that you are embarking on a course of action which in my opinion – which I am not inclined to thrust upon you . . .

MR. REED:

I know it.

COURT:

. . . is not in your best interest. Every case is a special case. The fact patterns of all cases are very peculiar to the

specific charge and the specific elements that come up to make a criminal case. Criminal attorneys and Mr. Humphrey who would be the attorney that would be involved for you – is an extremely well-experienced attorney in criminal law. He's been public defender for Marshall County for close, I think, to a decade. He's been involved in other criminal cases, has done work including appellate work all the way to the United States Supreme Court. He has practiced not only in this court and the Marshall County courts and other surrounding courts, he's also taken various steps of pursuing State criminal matters into the Federal District Courts and [5] 7th Circuit Court of Appeals. I am familiar with these things that he has done. I suspect that these are things that are beyond your ability to do.

In addition, I would suggest to you that he is much more familiar with the workings of the decision making process whether it be tried to a court or a jury and he, better than you, can suggest to you the potential impact of types of evidence or specific testimony and as to its desirability for follow-up. He is a man trained in the law and he – simply having the experience of having done this including the specific intricacies of any case . . . I think would have a great deal more experience than any individual possibly could in dealing with the case. You are aware of that?

MR. REED:

Yes, I certainly am. That's the only reason I even hesitate.

COURT:

Frankly, I think the thing that you could not possibly do for yourself is to know how to preserve an appellate record in case you wish to do so because of any erroneous rulings of the Court anywhere through this proceeding. That has been somewhat true of the things we have faced thus far and will most certainly be true of anything that were to occur in trial . . . much more so than any of the procedural steps that we're undertaking now. You're going to get left in left field if, in fact, you lose the case and there are then Appellate issues, you're going to be waiving those all over the place and by waiving, I mean giving up.

[6] MR. REED:

Yes, sir.

COURT:

You are aware of that?

MR. REED:

Yes.

COURT:

In proceeding upon any case in the courtroom, I cannot first of all give you legal advice and I cannot show you any favoritism as against the Prosecutor because you are being unrepresented. The Court is not in a position to look out for one party or the other. The Court is only in the position to treat both fairly. That being the case you'll be held to the same standards and presentation and procedure as will the trained individual who is presenting the case against you. Do you understand that?

MR. REED:

Yes, I do.

COURT:

You can be required and you will be required to handle yourself with the same decorum and the same methods to present things in such a fashion as to not cause disruption of the standard legal process and otherwise to act as if you were trained in the law even though you are not. Do you understand that?

MR. REED:

Yes, I do.

[7] COURT:

I can think of examples where, for instance, you could get up during final argument having chose to not testify and begin talking about things that are within your knowledge but are not a part of the evidentiary record. Do you understand that if that were to come to pass I could hold you in contempt of Court and impose criminal sanctions from that, declare a mistrial and you'd be punished because of what you were trying to do in representing yourself and not because the case had even been completed?

MR. REED:

Yes.

COURT:

All of those things work against you most harshly, do you understand that?

MR. REED:

Yes.

COURT:

And knowing all of these things, is it still your desire to represent yourself?

MR. REED:

Yes, sir, I believe it's the only chance I have in all honesty. I appreciate . . . I honestly appreciate that . . . the old saying about only a fool represents himself or something of this nature, I think it is.

COURT:

It has to do with people being able to take out their own appendix if they wish. They can be their own doctor and [8] they can represent themselves in a court of law.

MR. REED:

I honestly . . . I would like in a way to be able to cooperate but seeing as this isn't possible – with an attorney.

COURT:

You haven't done . . . oh . . . you haven't done anything that shows a failure to cooperate with the Court. I haven't had any problems with you.

MR. REED:

And you will not.

COURT:

. . . if that's what you're suggesting by your comment. As I heard it I don't think it was. I want you to know that I think you're undertaking the wrong course of action. This is a matter that's not appropriate for me at this time to intervene. However, should it appear that you are involved in taking steps or presenting a defense that's clearly beyond your abilities, it is possible for the Court even during trial to set aside your request to represent yourself and to direct court appointed counsel to continue in your behalf. I can take that decision away from you at some later time if it appears to me that the workings of justice so require. Do you understand that?

MR. REED:

Yes, I do. I can appreciate it.

[9] * * *

[COURT:] All right, then we'll show this having been determined, Mr. Reed, that at the present time you are still seeking to represent yourself with Mr. Humphrey only on a stand-by status.

The July 15 order at Paragraph I does address itself to your previous request concerning the Detainer Act. Frankly, I never entirely understood your motion in that regard, except that you've indicated that for a variety of reasons you felt it necessary to make a record concerning the Detainer Act and I have not seen anything which appeared to me to be a violation of it and accordingly I denied your motion without being specific as to why because I frankly never understood what you were asking. I guess we shoud [sic] address that first.

You, Mr. Reed, are apparently acting under the belief that a request concerning violation of Detainer Act is necessary here for your protection and as I understand it, it's for your protection in an essentially unrelated case that's going on in the Southern District of Indiana, is that correct?

[10] MR. REED:

Several cases as a matter of fact, including one in the U.S. Court of Appeals.

COURT:

All right. Is there any further record that you are aware of that needs to be made at this time as it relates to that?

MR. REED:

Yes, sir, your Honor. I sent a petition for a revision of pre-trial procedure over to you this morning.

COURT:

I haven't got it. Do you know if it was delivered, Earl?

EARL VANCE:

I have not seen it.

MR. REED:

Paul was supposed to . . . the jailer was supposed to have hand delivered it this morning.

[11] * * *

(RECESS)

(RESUME)

COURT:

The Court obtained a copy of a multiple page document which has been file stamped August 1 – today – and is now part of the record of this case and is a motion of a variety of topics filed by Mr. Reed.

Mr. Reed, I was making inquiry concerning the Detainer Act.

MR. REED:

Yes, sir.

COURT:

Further comment if you would please?

MR. REED:

On the oral motion and the copy of the case that I had filed with the Federal Court, I listed that according to the Detainer Act in the case law that in order for the State to file a detainer and extradite petitioner from the Federal government which by the Detainer Act is a state – that should the petitioner file the petition for hearing prior to removal by the Detainer Act to the State, that the State must grant [12] this hearing. I did file this. It is in the Court records where I filed this with the State, with a petition for appointment of counsel and for legal action in the Court – both State and Federal and that both the State and the Federal did deny this pre-transfer hearing and did, in fact, transport me without this requested hearing. The State agreed to this hearing on one of these pages

contained in the paperwork that I gave to the Court from the Federal court to grant this . . . grant an attorney where it was signed by me and Mr. Gordon or something which is the administrator systems manager and he wrote to Mr. Brown concerning this. The hearing was never granted. The petitioner filed both with the warden and received a denial, with the United States Attorney and in the Federal Court. The Federal Court ruled that it had to be filed in the state, but the actual ruling in the Federal Court was more to ascertain that it was properly filed and that it is recorded in the Federal Courts that I did file it. According to the Detainer Act without this pre-transfer hearing, I should be dismissed from the charges.

Now I do not have and I have not been made available to any law or law books or anything else as of this date. I might mention that the court order signed by the Court on July 15 and that it was lost or misplaced because this hearing has still never been sent to the jail and they are not aware of this. I talked to the sheriff and two or three deputies – one being the jailer . . . head jailer- . . . whatever Paul is over there and he is not aware of this either. Therefore [13] without this hearing they can grant me nothing, so I would like to bring it to the attention of the Court orally and until I can come up with the case law . . . actual Indiana State case law and appeals State law that actually determines this . . . that either the judgment's either be withheld or dismissed on that charge.

There are more laws pertaining to the Detainer Act that I would like to bring up, but that is the initial

dismissal that I wanted to be sure was filed before anything else before the Court. We talked about that at some length at the initial hearing.

COURT:

Mr. Reed, the Bureau of Prisons and the materials that you submitted to me says, "In response to your above request to Warden Keohane regarding a pre-transfer hearing where you were released under the interstate agreement on Detainer Act to the State of Indiana. Please see the attached memos from Mr. Cripe, your prison legal counsel." And one memo from Mr. Westbrooks, Regional Administrative Assistant Manager. It was the Bureau of Prison's position that inmates in Federal custody are not entitled to a pre-transfer hearing it is referenced by Cuyler v. Adams and that is signed by Gordon D. Pleus, Administrative Assistant Manager.

The memorandum that is referred to is apparently not attached to what you've submitted to me since the next document is your Petition for Appointment of Counsel.

MR. REED:

Your Honor, as a matter of fact, the person, this Mr. [14] Pleus, is in error here and in the Cuyler v. Adams which it states in here – the prisoner's transferred pursuant to interstate agreement are entitled to preexisting rights to challenge their transfer, including hearings in state adapting uniform criminal extradition acts which this state is a party to, did sign the agreement and to add to this, the Court of Appeals said in order for it to be binding in all cases that one must bring up the Equal

Rights Violations whereas we have an Equal Rights Violation – whether it's State, Federal or whatever – for this pre-trial hearing. And so far the rulings have been basically as I understand it – even if there was doubt without the Equal Rights hearing that there surely was no doubt with the Equal Rights hearing.

I did – as you will note through here – specifically brought that into the petition that not only was it a detainer violation as agreed to by the State of Indiana, it is also an Equal Rights violation as declared by the Federal courts.

COURT:

And so what is your suggested remedy again?

MR. REED:

I ask for a dismissal in that the State did violate the detainer transfer and that I did file all of the legal procedure pertaining to a request for a pre-trial hearing. As you will note in here I have filed over and over – I have filed . . . I even signed on the back of the detainer agreement relating to appointment of counsel on the hearing. I also filed a request for an attorney to fight the action in a pretrial hearing which was not acted upon or – as far as I know – [15] was just not acted upon.

COURT:

What was the result of Cause No. TH-83-69-C, the proceeding filed in Federal Court?

MR. REED:

There is a copy of the motion filed by me to the State also in this.

COURT:

Yes, I know. What was the outcome of the motion?

MR. REED:

Nothing as far as the State was concerned. They just ignored it. The Courts just did not rule on it at all. The Federal Court ruled that although the action seemed to be appropriate that it had to be filed in the State first which is how it's generally . . . that's how it's been run through the Courts. The Federal courts don't want to act upon it or take jurisdiction until the State had denied it and this is how the Federal court rules on it which was just recently.

COURT:

Any record to make on this issue, Mr. Brown?

MR. BROWN:

It's my recollection that it's correct that the Court has this. . . . you filed these things with the Court, did you not?

MR. REED:

Yes. Yes. They are filed with the Clerk.

MR. BROWN:

Your Honor, if you assume for the moment that we have [16] violated the Interstate agreement on Detainers and Mr. Reed is somehow wrongfully in our custody, that would still not be a basis to dismiss the charges. Even an illegal arrest in an ordinary sense does not invalidate the charge. I don't think dismissal would be appropriate. I

don't think there has been anything shown either in the motions filed or the documents filed here that indicate there has been any violation. Quite frankly this was all new to me. I'd never heard of Interstate (inaudible) Detainer and we made every effort to comply with it through the help of the State Administrator and the prison. As far as I know from reading it and the documents that Mr. Reed has filed, I think they show on the face that we complied. Assuming they didn't, I don't think he'd still have the right to dismissal and that's the request here.

COURT:

I don't see where there has been a violation of any State rights that have been presented nor any Federal rights. If you choose to pursue this cause in the Federal court that is certainly appropriate for you to do, but I am not inclined to review the Federal Bureau of Prisons' determination as to its procedure where the documentation has been submitted to me is satisfactory on its face as to your being presented to this jurisdiction for the facing of these charges. If you have a procedural problem that you feel you can remedy by Federal law, that's up to you, of course. The Court will continue to deny the request that you have relating to any Detainer Act violations by which the remedy is as you've suggested dismissal.

[21] * * *

[COURT:]

Did you have anything else to raise today, Mr. Reed?

MR. REED:

Yes, sir, I do. I would like to bring up before I forget it or it slips my mind – I would request the Court to have the jail to provide hair cuts as a for instance for petitioner. I believe that comes under the wording of 'care' and taken care of, listed in the Detainer Act whereas the State agees [sic] to provide this and that as a Federal prisoner, the U.S. Attorney General guarantees this specifically in the policies of the Federal detainees and prisoners both, and other such hygiene acts as listed on this latest petition.

COURT:

Have you had the availability of a hair cut since you have been here?

MR. REED:

No, I have not. They do not provide hair cuts.

COURT:

I will take the request under advisement. Anything else to address?

[26] * * *

MR. REED:

O.K. Yes, sir. I'm sorry. I honestly apologize because I know this is going to take up extra time, but if you will note, I have asked for over three months now for access to a law book on procedure. This has also been denied by everyone so far, including the Court order whereas these be made available has also been denied. And, of course,

as I said, the jail has not been made available with a copy of the Court order yet.

COURT:

I'll have one to them yet today.

* * *

[29] [COURT:]

Anything else?

MR. REED:

Yes, sir. I think the Court is knowledgeable in that when I was brought here from the Federal penitentiary that I had a release date very nearly the end of August or a parole date no later than September 14. I filed a motion for a bond on this. I think we discussed this in court ant the Court [30] withheld judgment or the setting of a bond on this. I would like to bring to the Court's attention that Mrs. McLochlin did, in fact, talk to the people in the Federal penitentiary release department and they told her – and I am waiting for confirmation of this – that my release date, mandatory release date, is approximately August 31. Approximately. I would like to ask the Court to again make a reasonable bond on this and possibly even recognizance which would prevent untold hardships on petitioner for a bond setting so this could be arranged in advance somewhat because as we near this trial date, I think everyone is going to be under much confusion and whatever. If this could be taken care of in advance and a bond set and my possible release that this would surely benefit me. I believe it would the Court also.

COURT:

Are you prepared to proceed with the bond recommendation today, Mr. Brown?

MR. BROWN:

Yes, your Honor.

COURT:

What is your recommendation concerning bond?

MR. BROWN:

Given the fact that the felony provisions which I guess I could something if nothing else. Given the fact that we do have an habitual offender count alleged in this case to the count of theft so that you have a potential of over thirty years in prison as possible penalty, given the nature of the seriousness of the offense to me it sort [31] of equates to something between a Class A and Class B felony if you want to think of it that way. I think there should be a very substantial bond given the seriousness of it and the lack of real connection with this community . . . somewhere in the neighborhood of . . . as I recollect the Court's regular schedule is $50,000.00 for an A felony and $25,000.00 for a B felony. That's what I thought and based on that I would recommend something in the neighborhood of $35,000.00 to $40,000.00 bond.

COURT:

What is your recommendation for bond, Mr. Reed?

MR. REED:

Your Honor, I would like to bring to the Court's attention that #1 – although this is alleged I am not guilty of this habitual or any other act and that I think a fair bond would be much less than this. I would like to bring to the Court's attention that I have never had any type of escape, attempted escape or any other violation of the law as far as a jail break or anything else is concerned. This should indicate that such an outrageous bond be set that I would think that seeing the other defendant in this case, Marsha Lee, has a $5,000.00 bond and many other people before this very Court with records that are much worse as far as escape risks and so forth have much less bond than that and have posted them, as a matter of fact, right here in this court – that my bond should be set at perhaps $5,000.00 which would be much more realistic and that I still don't feel that I have no attachments here. I have a lot of equipment [32] that has been stolen from me and I am filing recovery motions for this equipment right here in this Court very shortly and several other things that actually do attach me to this community. I still feel that $5,000.00 would be perhaps even stern if anything.

I might also add there is no violence connected with this case and I don't think that any threat to society whatsoever is involved.

COURT:

Tell me in your own words, Mr. Reed, what you think filing motions with the Appellate Court is going to do with your trial date?

MR. REED:

Hopefully nothing. I am only hoping for an order from the Court of Appeals overturning some of this Court's decisions on confinement violations and we both know how the Court of Appeals works. I think they have this little tendancy [sic] that extends things for months at a time and that could, in fact, extend the trial date. I don't really know. I wouldn't even remotely attempt to outguess what they might rule. I just think that if . . . I don't really see where my presence in a society would hender [sic] anything whatsoever as far as punishment on society, danger to society and I think it would benefit about everyone concerned in all honesty, including and perhaps even paramount trial preparation.

COURT:

I agree more generally with the State than I do with [33] you, Mr. Reed, concerning the amount of bond. In view of the potential for extended incarceration that exists in this case together with what I perceive to be the limited period of time following your release date and the trial date we will be proceeding upon, I think a substantial bond is appropriate. In adopting that position I note the fact that there is a habitual offender charge attached to the filing in this case. I note also what I believe to be your lack of family in this community and that there is no apparent employment in this community. You have connections with other areas, including other portions of Indiana, but I would anticipate there are also connections out of state and since the Court is aware and you've cited me to cases involving yourself arising from other jurisdictions, I'm going to establish bond in the amount of

$25,000.00 I am going to make a condition of the posting of that bond and your release upon it that at the time of your posting and your release that you also not be subject to incarceration under any other court orders such as the time you are presently serving for the Federal government.

I simply don't know whether there are any other detainers or other proceedings involving you anywhere, but those would need to be addressed and complied with before the bond would be considered appropriate.

MR. REED:

There are no other proceedings, your Honor, that I am aware of.

COURT:

That's (inaudible) the point. There may be some other stuff around, but I don't know what they are. At the moment [34] you don't know of any other either?

MR. REED:

No, sir, I do not.

COURT:

O.K

MR. REED:

I have a mandatory release date from the Federal system. I think your Honor is aware of what that is – that by law they have to release me.

COURT:

I am aware through you . . . you've indicated to me on several occasions that you believe it's around August 31?

MR. REED:

Yes, sir. That's what the approximation that they have initiated in their conversation so far.

* * *

[37] COURT:

Do you have anything else to raise?

MR. REED:

No, sir. I don't think so, sir. I apologize for taking [38] up so much of your time, but it's all issues that I. . . .

COURT:

Just so we all know where we're coming from, the presently scheduled trial date as I recall is September 13. I had a substantial conflict that I can't get out of come up for that particular week. We were holding trial time available the next week and so I am going to have to change the trial date. We will be commencing Monday, September 19 and the trial will be scheduled for the next week and I anticipate it running at least a week, starting at 9:30 a.m. I will indicate to the parties . . . I think I previcously [sic] did that all proposed or preliminary or final instructions be submitted in the standard practice on the Friday before trial, so if I've given you a previous indication, that would be changed now to be available to me Friday, September 16.

MR. REED:

Will there be a witness subpoena date which I must meet for the witnesses I intend to subpoena for actual trial? Will there be a date and will that have changed since you have extended the trial date?

COURT:

I cannot tell you how long it takes to serve a subpoena because I don't know. If I were you, ask Earl Vance while I was walking back over to the jail how long it takes. The fact of the matter is that you have indicated that you are going to have some very special problems getting subpoenas delivered in some of these cases anyway.

MR. REED:

Yes, I will.

[39] COURT:

I would simply urge you to arrange for that as far before hand as you possibly can. There are rules relating to when a continuance is appropriate for failure to be able to obtain subpoena and you will need to comply with those if, in fact, you are unable to locate a witness and need a continuance accordingly.

MR. REED:

I was hoping I would get the procedure books. If I may ask one question. You have ordered that I be allowed to receive or choose two books at a time from the legal library. Should perhaps the Court make this more specific so that I have a means of getting this. . . . rather than just

a blank court order still leaves quite a bit of room for perhaps problems in my being able to get to this library, for instance.

COURT:

I thought leaving it as broad as possible with a clear intention expressed from the Court that you obtain the books would be the best method available to assure that you got them. What two do you want today?

MR. REED:

I would like to have trial procedure for #1 in rules of the court.

COURT:

That's one book. I have the 1983 Trial Rules book. We'll see that you get it.

[40] MR. REED:

I would also like to have – if it is in the same book or whether it's not – appeals court procedure.

COURT:

It's in the same book.

MR. REED:

O.K. I would like to look through that book alone for the statutes – Indiana statutes – pertaining to the law I'm charged with – if that is in one book.

COURT:

I'll send you the blue book on theft and the 1983 rules book. Do you have anything else to take up today?

MR. REED:

No, sir, your Honor. I want to thank you for your patience. I honestly appreciate it.

* * *

[COURT MINUTES, AUGUST 1, 1983]

* * *

Comes now O. Scott Reed individually and files Petition for Revision of Pre-trial Procedure and Relief of Violations as follows: (H.I.).

Defendant in Court in person and State in Court by Prosecutor for further pre-trial conference proceedings. The Court now makes inquiry into defendant's determination to represent himself including extensive warnings to the defendant of the dangers of such representation. Defendant now chooses to represent himself with attorney Humphrey on standby status only. Defendant makes oral motion for jail to provide him with hair cut. Motion taken under advisement. Defendant moves for availability of transcript of trial of Denver Manning held in Fulton Circuit Court during 1982. Upon determination by Court that transcript of such trial was produced and available for purposes of appeal by Denver Manning and because certain witnesses will identical [sic] to witnesses in that case, the Court now grants the said request and instructs court reporter to provide photo copies of Denver Manning transcript to defendant. Defendant now request [sic] that copy of court's order of July 15 be transmitted to the jail in order to assure availability of Library request granted. Defendant now request [sic] that the Clerk certify copies of all motions and pleadings prepared by the defendant and submitted to Court back to defendant so that he might have copies available for purposes of seeking appeal if he so desires. Request granted. Defendant now request [sic] modification of jail telephone rules in order that he might contact

potential witnesses. Request denied. Defendant now request [sic] determination of amount of bond in view of upcoming termination of federal sentencing. Arguments upon bond heard and the Court now establishes bond in the amount of $25,000.

Defendant now request [sic] opportunity for inspection of physical exhibits including cab and license plate. Request granted. Prosecutor to make arrangements for such inspection.

The Court now notes that because of conflict in trial schedule, trial will not be able to commence on the presently scheduled date of September 13. Cause now therefore set over to commence at 9:00 a.m., on Monday, September 19, 1983.

* * *

PETITION FOR REVISION OF PRE-TRIAL PROCEDURE AND RELIEF OF VIOLATIONS

[Dated] July 29, 1983
[Filed 8/1/83]
(Caption Omitted In Printing)

Comes now, O. Scott Reed, *pro se* counsel for defense, and requests revisions in court order dated July 15, 1983 stipulating pre-trial, and trial procedure as follows.

1. That the Court denied petition for dismissal or relief from violations pursuant to the Detainer Act because: "defendant has failed to provide any showing of the terms of the Act relied upon or the particular acts of the State to which he objects." Petitioner would remind the Court that he has filed proof of violations (see case TH 83-69C, filed in Federal Court at Terre Haute, Indiana) in the above court, and remind the court that he has, to this day, been denied all access to legal facilities, to all law books, and to any means of preparing defense, or submitting further proof of State violations. Petitioner requests full and complete hearing prior to final dismissal of Motion to Dismiss charges pursuant to Violations.

2. That petitioner has been, and still is, denied means to interview witnesses, or perspective [sic] witnesses, or to prepare for legal defense. The court denies aid of Stand-by counsel to transport perspective [sic] witnesses, and refuses to provide cost of transportation for perspective [sic] witnesses, (especially pauper witnesses, or witnesses with no means) to travel to the Jail. Petitioner is denied availability to interview witnesses, and is restricted from Witness interview by Jail policy.

Further, petitioner has requested use of phone, for contacting witnesses and aiding in defense. The court has limited phone to *one five minute collect call per week*, at a time when most witnesses are not available, and *if* petitioner should catch witness at home, and *if* the perspectivie [sic] should *accept collect call.*

* * *

4. It being apparent from the record, with oral argument, and submitted evidence, and denial of prior motions for relief of violations, that petitioner cannot receive a fair trial, and that irrepairable [sic] damage has occurred to prevent a fair trial, through the above listed violations, and court ordered restrictions on defense preparation, communication, confinement and prejudice, petitioner would suggest that because of the elapsed time of the above violations (over 3 months) and the limited time left for trial within the laws, and the violations listed above, that the charges should be dismissed, or that the court show where and how such violations can be cured within the legal standards for a fair trial. Petitioner believes this to be impossible and therefore would request dismissal of charges.

Respectfully submitted,

/s/ O. Scott Reed

Clerk of the Court:

Please prepare copies of this motion for all concerned, including Standby Counsel, Mr. Jere Humphreys, Plymouth, Indiana, and a copy for petitioner for court of appeals motion. Petitioner has full restrictions from legal

facilities or any method of producing copies from original in duplication.

Thank you,

/s/ Scott Reed

* * *

PETITION FOR SUBPOENA
FOR DEPOSITIONS UPON ORAL EXAMINATION, AND
FOR PRODUCTION OF DOCUMENTARY EVIDENCE

[Dated] August 10, 1983
[Filed 8/11/83]
(Caption Omitted In Printing)

Comes now, O. Scott Reed, counsel pro se in the above cause, and requests the following subpoenas for depositions upon oral examination and for production of documentary evidence as per rule 27, 28, 30, 45, and all other rules relating to, or granting, petition for subpoena, and per rules as set forth by the above court, and court order, whereas the court will set time and make arrangements for place of interviews, as follows:

* * *

4. That this is the first opportunity petitioner has had to file this petition since Court denied prior request of this nature, because of no available legal materials. Materials delivered by court order, August 9, 1983.

* * *

10. That fees, or funds for prepayment of travel expense be made available, where necessary, or means of transportation be provided to and from examination.

List of persons to be subpoenaed for examination:

1. Marsha Lynne Lee, Lot 18-B, Colonial Trailer Court, Argos, Indiana – Oral examination.

* * *

33. Rochester phone company, Keeper of the records, Rochester, Indiana. Documentary evidence – phone call records from July 1980 to March 1982, for phone 223-2265 (Scott Reed) and 223-2608 (M&S Salvage) and the name of person who can testify as to verification of these records.

Petitioner would remind the Court of its Order (7-15-83: 8-1-83) restricting petitioner from appointments of time and place, would request appointments and issuance be made as soon as possible due to approaching trial date and Detainer Act time limits.

The above is true to the best of my knowledge.

/s/ O. Scott Reed

The Clerk will please prepare necessary copies for all concerned and deliver same, as per court order.

Thank you.

* * *

MOTION IN LIMINE

[Dated] August 18, 1983
[Filed 8/19/83]
(Caption Omitted In Printing)

Comes now, O. Scott Reed, counsel pro se, and petitions the court to grant this Motion in Limine as follows:

1. The petitioner is above charged and scheduled for trial September 19, 1983.

2. That State's Record of Discovery indicates that he intends to use a transcript of an alleged conversation between Harold Van Cleve and O. Scott Reed, regarding a stolen vehicle on October 6, 1979.

3. That there is no evidence that such conversation was, in fact, taken from O. Scott Reed, or that the transcript is accurate.

4. That said transcript has been altered, and changed, on its face, and parts of transcript have been removed, and erased, and parts have been concealed, and made fraudulent.

5. That lack of credibility, due process, and fundamental fairness require transcript to be suppressed from trial.

Petitioner requests Motion in Limine be granted, and requests Court to instruct the State of Indiana, through the prosecutor, and his witnesses not to mention or refer to, or interrogate concerning said transcript, or attempt to produce or use said transcript in evidence, or at trial.

Respectfully submitted,
/s/ O. Scott Reed

Clerk of the Court:

Please prepare copies of this motion for all parties concerned as per court instructions.

Thank you.

* * *

PETITION FOR DISCHARGE

[Dated] August 29, 1983
[Filed 8/29/83]
(Caption Omitted In Printing)

Comes now, O. Scott Reed, counsel pro se, in the above court and causes, and requests the court to discharge petitioner for the following violations of law and procedure.

1. That petitioner is confined in the Fulton County Jail awaiting trial on above causes. That he has been granted release from all other detaining actions, including Federal Authorities. See attached "Mandatory Release" information from U.S. Department of Justice.

2. That petitioner is being detained contrary to Indiana law and procedure: 35-33-10-4, Article 4(c) . . . trial shall be commenced within one hundred twenty (120) days of arrival of the prisoner in the receiving state . . . but for good cause shown in open court . . . no good cause available as petitioner has petitioned court for trial within said trial limit (see petition on file dated 7-26-83, "petition for relief of violations" paragraph "4", and the court docket has included civil cases within allowed time, and misdemeanor jury trails [sic] not required in time limits, whereas criminal felony cases take precidence [sic] when petitioner is in jail. Also, extension of time was not requested by court or prosecutor, nor was it granted, and 10 day pre-time limit was violated by prosecutor whereas he has made no timely requests. Therefore the court should grant discharge as set forth in the detainer act, and by law.

3. That petitioner was illegally brought into this State, against his will, and after demanding a pre-transfer hearing, which was denied, illegally, and against the agreement on detainer acts, Article 4(a)(D), see motions in court files whereas petitioner filed proper requests in Federal Court (TH 83-69C), and petitioner was removed illegally. Also, the violation is under Article 9(7) whereas must be granted chance to contest legality of delivery. Acts 1981, P.L. 298, Sec. 2, Article 9(7) of detainer agreement.

* * *

Petitioner would ask the court to discharge petitioner for the above violations, as prescribed by law, and order treatment for temporary relief of pain and impairment because of illegal confinement, or if the court refuses to discharge petitioner, to order immediate release on recognizance bond, or set bond whereas petitioner may be released. (See attached petition for Bond Reduction.)

Respectfully submitted,

/s/ O. Scott Reed

dated August 26, 1983,
as mailed.

Clerk of the Court:

Please prepare copies for all concerned and schedule hearing as soon as possible under Emergency affidavit as submitted. Copies for prosecutor made available by court

Instruction as petitioner has no means of producing or delivering same.

Thank you.

* * *

PETITION FOR BOND REDUCTION

[Filed August 29, 1983]
(Caption Omitted In Printing)

Comes now, O. Scott Reed, counsel pro se, in the above causes and petitions the above court to grant this petition for the following reasons:

1. That petitioner is charged in the above causes.

2. That petitioner is scheduled for trial in the above court on September 19, 1983, or later.

* * *

5. That petitioner is counsel pro se, and is under illegal confinement in the county jail, and according to law should be released and discharged. See Court violation of 120 day maximum allowable trial date, Detainer Act Violation 1C 35-33-10-4 article 4(c); and petition for injunction, in the Court of appeals, dated 8-15-83 - 8-17-83, copy of which is in court files.

6. That petitioner is suffering severe illness due to illegal and improper confinement, and petitioner is under "specialist care" and doctor and hospital supervision, and petitioner is becoming permanently disabled because of improper confinement conditions, and failure of county to provide proper medical care because of "county lack of funds available", and that petitioners general health is getting rapidly worse and may require lifetime medical aid and rehabilation [sic]. That petitioner is now under heavy drug medication including "codeine" every 4 hours and other medication for "high blood pressure"

and "spinal inflamation" [sic]. Please contact Sheriff Richard McLochlin, or Dr. Steve Musselman, or Woodlawn Hospital for conformation [sic].

7. That petitioner is restricted from proper defense preparation by illegal confinement in county jail. See motions filed in above court and in court of appeals pending #5 above. And that release on bond would tend to cure many of the problems presented by the illegal confinement, such as defense preparation, and medical treatment restrictions.

* * *

10. That petitioner has filed for a preliminary injunction against the County Jail and the above circuit court which may, in fact, cause a[n] extended delay in trial date.

* * *

12. That petitioner is under Federal Supervision, by the U.S. Parole Commission, and as such, the location of petitioner is always available, and within reach of the Court.

For the above reasons, petitioner would request a recognizance bond be granted, as petitioner believes there is insufficient cause to detain petitioner, as to amount of suffering sustain by such detainment.

Respectfully submitted,

/s/ O. Scott Reed

Dated: August 29, 1983

* * *

Parole Form 1-11
(Rev. May, 1976)

UNITED STATES DEPARTMENT OF JUSTICE

Bureau of Prisons

United States Penitentiary
(Institution)

Terre Haute, Indiana 47808
(Location)

Certificate of Mandatory Release

UNITED STATES PAROLE COMMISSION:

It is certified that REED, Orrin Scott (name) 04217-059 (register no.) now confined in the United States Penitentiary, Terre Haute, Indiana

is entitled to 649 days statutory and extra good time deductions from the maximum term of sentence imposed as provided by law, and is hereby released from this institution under said sentence on August 29, 1983. Said person is released by the undersigned according to Section 4163 Title 18, U.S.C.

Upon release the above-named person is to remain under the jurisdiction of the United States Parole Commission, as if on parole, as provided in Section 4164, Title 18, U.S.C., as amended, under the conditions set forth on the reverse side of this certificate, and is subject to such conditions until expiration of the maximum term or terms of sentence, less 180 days on December 10, 1984. He is to remain within the limits of Northern Indiana.

This certificate in no way lessens the obligation of the person being released to satisfy payment of any fine included in the sentence; nor will it prevent delivery of said person to authorities of any state otherwise entitled to custody.

/s/ Larry K. Morrison
LARRY K. MORRISON, Acting
Administrative Systems Manager
for THOMAS F. KEOHANE, JR.,
Warden
(Warden or Superintendent)

This CERTIFICATE will become effective on the date of release shown on the reverse side. If the releasee fails to comply with any of the conditions listed on the reverse side, he may be summoned or retaken on a warrant issued by a Commissioner of the Parole Commission, and reimprisoned pending a hearing to determine if the mandatory release should be revoked.

Adviser **United States Probation Officer**

Probation officer **Paul E. Panther, CUSPO, Northern District of Indiana**

CONDITIONS OF MANDATORY RELEASE

1. You shall go directly to the district shown on this CERTIFICATE OF MANDATORY RELEASE (unless released to the custody of other authorities). Within three days after your arrival, you shall report to your parole advisor if you have one, and to the United States Probation Officer whose name appears on this Certificate. If in any emergency you are unable to get in touch with your parole advisor, or your probation officer or his office, you

shall communicate with the United States Parole Commission, Department of Justice, Washington, D.C. 20537.

2. If you are released to the custody of other authorities, and after your release from physical custody of such authorities, you are unable to report to the United States Probation Officer to whom you are assigned within three days, you shall report instead to the nearest United States Probation Officer.

3. You shall not leave the limits fixed by this CERTIFICATE OF MANDATORY RELEASE without written permission from the probation officer.

4. You shall notify your probation officer within 2 days of any change in your place of residence.

5. You shall make a complete and truthful written report (on a form provided for that purpose) to your probation officer between the first and third day of each month, and on the final day of parole. You shall also report to your probation officer at other times as he directs.

6. You shall not violate any law. Nor shall you associate with persons engaged in criminal activity. You shall get in touch within 2 days with your probation officer or his office if you are arrested or questioned by a law-enforcement officer.

7. You shall not enter into any agreement to act as an "informer" or special agent, for any law-enforcement agency.

8. You shall work regularly unless excused by your probation officer, and support your legal dependents, if any, to the best of your ability. You shall report within 2

days to your probation officer any changes in employment.

9. You shall not drink alcoholic beverages to excess. You shall not purchase, possess, use, or administer marihuana or narcotic or other habit-forming or dangerous drugs, unless prescribed or advised by a physician. You shall not frequent places where such drugs are illegally sold, dispensed, used or given away.

10. You shall not associate with persons who have a criminal record unless you have permission of your probation officer.

11. You shall not have firearms (or other dangerous weapons) in your possession without the written permission of your probation officer, following prior approval of the United States Parole Commission.

12. You shall, if ordered by the Commission reside in and/or participate in a treatment program of a Community Treatment Center operated by or contracted by the Bureau of Prisons, for a period not to exceed 120 days.

I have read, or had read to me, the foregoing conditions of mandatory release and received a copy thereof. I fully understand them and know that if I violate any of them, I may be recommitted. I also understand that special conditions may be added or modifications of any

condition may be made by the Parole Commission upon notice required by law.

_____	_____
(Name)	*(Register No.)*
WITNESSED Illegible	8/8/83 *(Date)*
_____ *(Title)*	

UNITED STATES PAROLE COMMISSION:

The above-named person was released on the 29th day of AUGUST, 1983, with a total of 649 days remaining to be served.

/s/ W. J. Seely
(Case Manager)

* * *

IN THE FULTON CIRCUIT COURT

CAUSE NO. S-82-53 & S-82-55

(Caption Omitted In Printing)

PRE-TRIAL CONFERENCE

BEFORE THE HONORABLE

DOUGLAS B. MORTON, JUDGE

FULTON CIRCUIT COURT

September 13, 1983

APPEARANCES:

Prosecutor for the State of Indiana

Richard A. Brown

For the Defendant - O. Scott Reed, Pro Se

Jere Humphrey - Stand-by Counsel

[3] COURT:

This is Cause No. S-82-53 and S-83-55, State of Indiana vs. O. Scott Reed. We have a trial coming up next week and a variety of motions and things to deal with.

Mr. Reed, since the last time you were in court I suggested casually to the sheriff that he might make arrangements for you to get a haircut without me having to order it. It doesn't take me very long to look at you and see that you haven't had one, so I am going to make a written order directing the sheriff to obtain services of a barber for you at county expense and direct that a haircut

be obtained for you. So as to get it some time to return back to normal, I'll try to have that done by Thursday . . . the haircut done by Thursday. The order will come down today.

At the present time we're scheduled to commence trial next Monday. I've got some things we need to work out. Mr. Brown, obviously we have motions of Mr. Reed's to deal with that have been pending - some of them for up to as much as thirty days. Do you have anything that you need to discuss at the present time?

MR. BROWN:

No, your Honor. I filed yesterday . . . in anticipating having a hearing tomorrow or yesterday, I filed a supplement to the record of Discovery with some information I was frankly not sure whether or not he'd gotten to begin with and a couple of times I knew he hadn't. The volume of information is great and I wanted to make sure everything was presented to him ahead of time. I just filed that yesterday and I [4] guess he probably just got the copies because we weren't over here yesterday. Beyond that, no, I have nothing. That's really not a motion or anything, but I wanted the Court to be aware of that.

* * *

[12] [COURT:]

I have a Petiton [sic] for Discharge which you submitted, Mr. Reed, dated August 29. The document is of substantial length and included a petition for bond reduction and an affidavit by yourself. Do you have anything to add concerning (inaudible) at the present time?

MR. REED:

The petition for discharge?

COURT:

Yeah.

[13] MR. REED:

Yes, sir. What I would like to do is use the law books here and just read sections right out of it pertaining to it as direct law if I may.

COURT:

All right.

MR. REED:

I'd like to start with Indiana 35-33-10-4 which is the agreement on Detainer Act in which I was brought into the State's custody and it says in Article 4(c), it says, "in respect of any proceeding made possible by this Article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, that for good cause shown in open court the prisoner or his counsel being present, the Court having jurisdiction of the matter may grant any necessary or reasonable continuance' and I would like to submit at this time – as I have in the petition for discharge – that any criminal offense that where the prisoner has been restrained from release or in bond – that (illegible) has preference over the civil or misdemeanor matters and people that are out on bond and that could be the only cause that I could see where the Court could possibly have granted a continuance which will be a month past 120 days . . . uh . . . trial the

first of next week and secondly, I would like to bring up the illegal aspects of my being brought into the jurisdiction whereas I submitted evidence already in this petition filed with Federal Court where that I, in fact, did file for a pre-trial or a pre-transfer hearing. I filed that with this Court in a [14] petition on February 23 and which the Court apparently didn't answer or whatever. I filed it with the Federal government which they denied. A copy of all this is in your records there. Also, I brought it to the Court's attention here as you remember as the first concern of mine when I was brought up for arraignment.

Also in the agreement that I was brought here under signed by Mr. Brown, he did, in fact, agree to abide by the rules of the Detainer Act and the Court did also – as you yourself signed it, your Honor, and where it, in fact, says that I should be granted hearing and that the Court and the prosecutor apparently agreed with this or they wouldn't have signed the Detainer Acts against me and that also on the back of the agreement, there is a place where if I ask for an attorney that this is also noted on there. Let's see if I can get this straight. The copy is upside down. "Agreement on detainers offer to deliver temporary custody" . . . it's dated March 21, 1983. It gives the provisions of Article 5 which I'll bring up in just a moment again and on the back of the paper, it has a place where I may request the Court to appoint counsel for this pre-transfer hearing which, of course, I did – both on the Detainer Act and in the motion filed February 23 with this Court which was either both denied or disregarded or the Court failed to rule on it.

COURT:

A pre-transfer hearing is a Federal procedure, is it not?

MR. REED:

Federal and State both as it turns out. I filed with the [15] . . . first I filed with the Federal Court on this and of course, I didn't get an answer at that time because I was brought here before the Federal Court could grant the hearing. They said that it must start out that I must ask the State court first which I did, in both the Detainer Act and by my motion of February 23 where I asked for an attorney to file the necessary things for this.

At any rate what happened was that it was all totally ignored or disregarded or whatever is proper and that I was brought against these rulings and I was not granted this and I did demand it – both of the warden of the United States District Court and also this court and it was denied by all three as it turns out.

What I would like to go . . . the next step is on 120 days . . . oh, on that article . . . I'd like to go back just a second.

On Article 9, #7 in the last paragraph . . . the last four lines is really all I think the Court is interested in. Where it says . . . the authorities having custody of the prisoner shall also advise him in writing of his rights of counsel, to make representations to the governor within 30 days and to contest the legality of its delivery.

Now this is set out in both Indiana Code 35-33-10-4 and by the Public Law Acts of 1981 in 298 in Section 2, whereas this is the law that I must be granted this and I

have not been . . . as a matter of fact, I have been denied this thing.

There is one possible exception to this where in one case that the Court did rule that petitioner should mention to the Court if trial date was going past this. On July 26 [16] in one of my motions – I think it's paragraph #4 – I did request that the Court, in fact, try me within this 120 days. The Court apparently chose not to or something because 120 days is long past and I was not tried. There is a mention of it in the Petition for Discharge in #2 where it says 'no good cause available if Petitioner has petitioned the Court within said trial limits. See petition on file dated 7-26-83 – Petition for Relief of Violations, Paragraph #4 and the Court docket has included civil cases within this allowed time and misdemeanor jury trials and where it goes on . . . et cetera . . . and back to the felony cases – do take precedent whereas I am confined in jail and another rule I felt Mr. Brown might try to slip by on is that on some cases there is a ten day pre-trial limit. Now this does not actually apply to the Detainer Act . . . where the prosecutor must file ten days before the time limit asking for a request or (illegible) time. He did not file this and therefore it could not possibly be used even under the 180 day trial limit which doesn't actually apply at all. It all boils down to one thing – that the Court and the prosecutor did agree to try me within 120 days when they accepted this petition for agreement on Detainer Act, that I asked the Court in Paragraph #4 that I just mentioned – to insure that I be tried which was a full 30 days before trial . . . the date was set . . . and that as a matter of fact, it has been totally disregarded and my trial date has moved right on now to five months rather

than four months – which will be five months . . . uh . . . the 24th of next week which will be the same week as my trial was set for.

[17] Ironically, immediately after my filing that, the Judge extended the time of my trial date – as a matter of fact – by one week from September 13 to September 19.

COURT:

Originally it was scheduled to start tomorrow and I've got a variety of things come up that I'm going to be out of town and so we set it over until next Monday.

MR. REED:

Yeah . . . yeah.

COURT:

Well, the document I think you are referring to has your date of July 29 on it which is the day you drafted it. It was received by me on August 1. It's a petition for Revision of Pre-trial Procedure and Relief of Violations. Paragraph #4 reads as follows: It being apparent from the record with oral argument and submitted evidence and denial of prior motions for relief of violations that petitioner cannot receive a fair trial, that irreparable damage has occurred to prevent a fair trial through the above listed violations. The Court ordered restrictions on Defense preparation, communication, confinement and prejudice. The petitioner would suggest because of the elapsed time of the above violations (over three months) and the limited time left for trial within the laws and the violations listed above, that the charges should be dismissed or that the Court show where and how such violations can be cured within the legal standards of a

fair trial. The petitioner believes this to be impossible and therefore would request dismissal of the charges.

[18] MR. REED:

No, sir. That's not the one.

COURT:

That's the only thing I've got from you that's dated in July, Scott. At least the only thing that has a caption on it that says Relief of Violations that's dated in July. I haven't seen anything where you've made a specific reference to the 120 days. I guess that was the purpose of you reading that.

MR. REED:

Well, it's in this other one. I think it's dated the 26th. The date on it is the 26 and the paragraph #4 does . . . here it is. Here it is right here.

Paragraph #4 says: The petitioner requests trial be held within the legal guidelines of the agreement on Detainer's Act, signed by the State of Indiana and by which the State of Indiana is in violation.

See the first motion filed before the Court which of course was that Federal thing that I brought in and . . . is forcing petitioner to be tried beyond the limits as set forth in the agreement on Detainer Act. Petitioner has filed oral motion and documentation before the Court, request of dismissal of charges which is pending and requests no extension of time be granted beyond those guidelines. The three month delay rests solely in the Court and irreparable damage has resulted and the

charges should be dismissed for the above reasons and violations.

[19] COURT:

What is the date of that?

MR. REED:

July 26, 1983.

COURT:

That's your hand-written date on it?

MR. REED:

Yes, yes. If you'd like, I can show you a copy of mine.

COURT:

Do you have any response to that, Mr. Brown?

MR. BROWN:

Yes, your Honor. My only response would be that even if . . . I think the law is clear that even if he has been brought here illegally, it does not effect the jurisdiction of the court or the power of the Court to try him. The only effect that I could see that would have would be if some evidence was obtained by virtue of assuming he is here improperly or we have exceeded our deadlines or whatever . . . some evidence was obtained by virtue of that or in the course of that . . . that might be admissible, but it is my understanding that so long as the Court has physical or personal jurisdiction over the person, how he got here does not effect the charge other than he's not entitled to a discharge because he was brought here illegally, so I think assuming all that's true, nowhere is it set forth that

the remedy for that is a discharge and it also provides – it was read somewhere – that while we may not have followed it . . . I'm not sure there was ever any hearing on it, the Court may grant continuances past the time period [20] for any necessary or reasonable . . . may grant any necessary or reasonable continuance. It's not a very strict standard, and I think the court had it set for this week and the court's continued it a matter of a few days and there was no objection to the setting at the time it was set. I just can't see any basis for discharge if that's what we're talking about. I'm not sure what else we'd address here to that motion.

MR. REED:

Your Honor, I think it's been apparent that I did raise an objection to the setting. As a matter of fact, I asked that it should be brought as was clearly indicated back within the 120 day line and secondly, the prosecutor is alleging that the petition rests solely on my being illegally brought into the state which the main issue is actually the 120 days which he agreed to abide by and the Court also when they signed these agreement [sic] and that this has been clearly and truly and absolutely violated against the rules of the Detainer Act, against public law, 298, Section 2 and against everything in this article.

COURT:

Today is the first day I was aware that there was a 120 day limitation on the Detainer Act. The Court made its setting and while there has been a request for moving the trial forward, there has not been any speedy trial request filed, nor has there been anything in the nature of

an objection to the trial setting, but only an urging that it be done within the guidelines that have been set out.

I'm going to deny the Petition for Discharge for those [21] reasons and for the reasons set out by Mr. Brown in his argument and showing that discharge s [sic] the appropriate remedy for any violations that occur.

MR. BROWN:

Your Honor, I just found what I was trying to find and it is kind of after the fact that I was thinking of a 180 day provision and there is such a provision in Article 3 of the agreement on detainers and that is a provision contained in the notice given to Mr. Reed at the Federal prison and that was the time limit I was operating under.

There is a 120 day provision in Article 4, but I'm not sure how they jive, but it would appear to me from the language in Article 3, the section that he cited, that the 180 day provision would be just as appropriate. (illegible) not real sure how they read together.

MR. REED:

No, sir, your Honor, that doesn't apply at all. As it turns out, the 180 days relates to an entirely different matter. Under Article 3 the 180 days relates to where – if I filed a petition to this Court for adjudication of the case – in other words, if I was forcing the Court to try me, the Court has 180 days to try me in or discharge me as it turns out and has no bearing whatsoever on this 120 days that in Article 4 that has me in custody, on temporary custody, from out of state . . . it would have to be Feder [sic] in this case . . . which is all related and that I still would maintain that my demand in Paragraph 4 of July

23 of my petition did, in fact, demand that the trial setting and that I did, in fact, complain [22] and that the prosecutor's argument has nothing to do with this case whatsoever in that what he's arguing is an entirely different set of laws and does not even pertain to the jurisdiction which I am here under. I didn't file for a final ruling on the cases or anything. I was brought here against my will and that entitles me to a 120 day limit and I did file – as a matter of fact – in Paragraph #4 a motion demanding that I was being violated #1 and #2 that I be tried within the 120 days.

Now I believe that any violation of that just is a mandatory discharge under the law and I've read considerable on it and every case says that.

COURT:

Mr. Reed, on August 31 I received a petition from you dated August 30. It's entitled 'petition for pre-trial transcript'. I don't have the foggiest idea what you want that you think I've got that is a pre-trial transcript.

MR. REED:

On the Court's ruling on the motions for this pre-trial hearing.

COURT:

Do you mean a docket sheet?

MR. REED:

Well, not just a docket sheet. I was asking for a transcript of our arguments and court's orders. A lot of these arguments were oral as you recall and. . . .

COURT:

And you want a transcript of what's gone on in these proceedings?

[23] MR. REED:

Yes. That was what I was asking for . . . the reason being as I indicated that I'd filed as you know to the Court of Appeals on some of these violations and I have since filed in the Federal court in South Bend. As a matter of fact, I have signed subpoenas against the court here and your Honor, himself, plus the sheriff of this county. I am, in fact, waiting for them to be served by the Federal court at this time.

COURT:

How long ago did you file them?

MR. REED:

I think about two weeks ago . . . ten days to two weeks ago.

COURT:

I haven't gotten anything yet.

MR. REED:

I in fact did file them with Mr. . . . was it you I filed them with?

MR. HUMPHREY:

That was just last week.

MR. REED:

That was Friday before last, wasn't it?

COURT:

Is there going to be a request for a stay come through?

MR. REED:

Possibly, I don't know. I filed for a preliminary injunction and a declaratory relief almost verbatim as I filed with the Court of Appeals in Indianapolis. I think you have a copy of that.

[24] COURT:

I don't.

MR. REED:

You see the Federal court requires that they administer all the copy . . . I cannot give you a copy.

COURT:

They do their own summons. I do know that.

MR. REED:

I already signed the things with the U.S. Marshall. I've already signed the summons for you and Mr. McLochlin as it turns out and I'm merely waiting for them to be issued.

* * *

[56] COURT:

So we would be trying this to a six-man jury?

[57] MR. BROWN:

I'm not . . . I guess we would. This was filed in December of last year. I was thinking it was an older case than this, but I guess it isn't in terms of filing.

* * *

[59] [COURT:]

What else do we need to talk about?

MR. REED:

Bond reduction and you haven't made any decisions on this pre-trial or pre-witness . . . pre-trial witness examination yet. That and my petition for reduction of bond which would solve about half of our problems if you granted it.

COURT:

I don't recall there being anything new presented in that bond reduction motion.

MR. REED:

The only part that really is new is that the last time Mr. Brown said that I had no reason to stay in this area . . . I believe there are several reasons which I would like to bring up. One being that I have a bunch of equipment that was sold in this county illegally by Marsha. She signed this off as my secretary and treasurer and sold a bunch of heavy equipment and so forth . . . some of it to Dimmitt up there at Argos and another place in Plymouth. I am going to get a civil action filed in this case naturally. These are all [60] reasons that I would have for

not leaving because we're talking about some very serious money.

Second, I was going to file charges on this land deal and of course, I'll file some suits on this including against Mr. Brown and his uncle, as it turns out. That's another indication that I absolutely will not be leaving this county and also against the jail for this permanent back injury that I've suffered over there because of lack of proper jail facilities.

I think all of these indicate that coupled with the fact that I don't have any escapes against me; I have absolutely no bond jumping against me; there is absolutely no indication whatsoever that I would be a hazard to society or that I would leave this area. Again, it would solve a lot of these problems in this pre-trial jail mess that if it is not allowed I am going to file a Motion for Continuance on that naturally because the jail has restricted me from this and this is contrary to this Court's very order and everything as I see it. It is surely a violation of fair trial [illegible] where indiscrimination – I might add – that Mr. Brown's allowed to visit his and I'm not allowed to visit mine. Now he's been coming up with a series of sayings and statements in the court that, in fact, that this is my bed and I should lay in it. I would like to read about a dozen Federal cases that says he is absolutely wrong and that I am a free person just like him. . . .

COURT:

Let's talk about bond reduction.

[61] MR. REED:

O.K. Well, I think that should a recognizance bond or one very low which is the only one that I can possibly meet as I think the Court is very well aware of this – would eliminate many of these problems and it's surely going to eliminate an awful lot of court action later if it was granted. I still don't see where I can be considered such a hazard to society or a threat to society or a threat to escape seeing as how I have never had anything relating to any of these issues ever charged against me.

COURT:

Do you have any response, Mr. Brown?

MR. BROWN:

I think the same that I had when the bond was set. I think I requested a higher bond than the Court set. I think given the habitual offender charge . . . a potential for thirty years (inaudible) enhance the sentence of thirty years plus the sentence on the Class D felony that the bond simply cannot be reduced to nothing or even a minimal amount. I think it's just the seriousness of the offense, the fact that he may have civil actions in this county . . . I really don't see – given the people involved – there may be a lot of money involved . . . involved . . . there may have been a lot of money involved and I don't know where it's going to come from anymore and I think that type of factor certainly isn't going to necessarily keep a person here if he had that choice or a thirty year sentence.

I think the bond is appropriate where it's at and it [62] should continue in that amount. It certainly should

not be reduced to nothing or even a minimal amount. It's my recollection it's set at $25,000.00.

MR. REED:

I understand that property out there was sold yesterday at an auction. I don't know this for a fact. If it has not been, that could, in theory, be a factor that could be considered.

COURT:

The sale was held up for a considerable period of time in order to determine whether you were going to appeal the previous rulings in that matter and nothing happened. I haven't received any notice of any sale and I wouldn't, but I frankly don't know whether it was or not. I haven't heard anything about the case for several months.

That's on the real estate as to the claim for sale of equipment. I don't know exactly how you'd go about a recovery of that. At the present time Marsha, of course, has a case pending in this court. She has requested pauper counsel and the examination of her at that time seemed to indicate that she had virtually no assets with which she is going to be able to obtain a defense. She did request a court appointed counsel. She has a job, but that is virtually . . .

MR. REED:

The equipment was sold, you know, illegally and she had no part in ownership whatsoever. It's still the law . . .

COURT:

Well, yeah, you're talking about recovery of the equipment itself?

[63] MR. REED:

Yes, right. By civil law which I already talked to Mr. Rakestraw about it . . . he right now actually is considering the case for the recovery. I haven't talked to him the last day or two, so I don't know what he's decided, but the equipment is located nearby . . . and whatever.

COURT:

He's in Indianapolis right now. I've had trouble tracking him down for a day or two. Well, I just have to recognize the previous record that you have, the fact that you were involved in a very substantial potential against you in this case, that the trial is close indeed and we would be talking about a difference of some six days. I did not make an earlier action upon the petition for bond reduction because I considered it to be a repetitive motion upon those that I had previously received and I will at the present time show it as denied. We'll leave the bond in the amount of $25,000.00.

* * *

[68] MR. REED:

What I would like to do at this time is I would like to guess you call it challenge the ruling or rebutt it here. To do this I need to read several Federal cases here that have taken over this State confinement problem directly and ask the Court to review this before he makes a final decision.

COURT:

If you have it written out in motion form you can submit it in writing and it makes for a better record. I will most certainly consider it. If you choose to simply cite the cases, I will read them. If you choose to read it into the evidence, . . . sorry, read it into the record at this time, you are perfectly well entitled to do that also.

I have my preferences that you not do it that way, but it's up to you as to how you want to do it.

* * *

IN THE FULTON CIRCUIT COURT
1983 TERM

CAUSE NUMBERS: S-82-53 and
S-82-55

(Caption Omitted In Printing)

ORDER

This cause being scheduled for trial on Monday, September 19 and there presently being certain matters at issue which require the Court's resolution, the Court now makes order thereon as follows:

1. Defendant's Motion in Limine dated August 19, 1983 relating to a certain transcript of conversation with a possible witness named Van Cleve is now GRANTED as to the transcript but without limiting reference to the conversation at the time of trial; should refreshing recollection become necessary, then such further rulings as to the transcript as may be contemplated by the rules of evidence will be considered.

2. Defendant's Petition for Revision of Pre-trial procedure and for Relief of Violations is DENIED.

3. Defendant's Motion in Limine relating to the State's use of prior convictions is GRANTED with the exception that use of prior convictions shall be allowed for purposes of cross examination should defendant elect to testify as per Indiana Law as described in the *Ashton* case and further the State will naturally be entitled to present its case concerning habitual offender status should it prevail upon the theft charge.

4. Defendant's Petition for Discharge dated 8-29-83 is now DENIED.

5. Defendant's Petition for pre-trial transcript is now construed upon explanation by defendant as a request for transcript of in-court proceedings as occurred in previous hearings and particular in hearing of August 1, 1983 and the same is now DENIED.

6. Defendant's Petition for appointment of Public Defender in which defendant requests a public defender for purposes of civil filings for alleged rights violations is now DENIED; the Court does now again offer to the defendant the opportunity for Public Defender to represent him in this proceeding and defendant again rejects such offer and elects to proceed as his own counsel.

7. Defendant's Motion in Limine date 9-7-83 is GRANTED to the extent that it deals with a South Bend Police report subject to a determination during the course of trial as to the necessity of use of such documents. As to other matters, Motion in Limine is now determined to not be an appropriate vehicle for addressing the admissibility of such documents and the motion in limine is DENIED subject to redetermination as to each document upon its admissibility at the time of trial.

8. Defendant's Petition for Advancement of Fees is now considered and upon representation of stand -by [sic] counsel Humphrey as to possible procedure for disposition of subpoenas, the Court now takes the said petition under advisement pending report by attorney Humphrey as to the necessity of advancement in the case of any particular subpoena.

9. Defendant's Petition for Bond Reduction is now heard and DENIED. The Court notes the repetitive nature of such petition.

10. The Court now again hears argument from defendant concerning his inability to obtain witness interviews in the jail. The Court now notes and reaffirms the position of its July 15 Order authorizing the defendant to take any deposition he deems necessary and notes that to date no request for scheduling for depositions has occurred and Court is now informed by stand-by counsel that he believes none is anticipated.

11. The Court now notes that it is made aware of a medical disorder relating to defendant's back, and that the court's first awareness of such situation was raised in his petition for appointment of Public Defender submitted on September 2, 1983; the Court now notes that further activities by the Court in dealing with such medical disorders do not now appear to be necessary for purposes of trial preparation or for the defendant's safe incarceration and that any activities relating to a potential change of defendant's status or location would only serve to make his trial preparation more difficult. Accordingly, the Court has determined that at present no further orders are necessary thereon.

12. The Court now notes that the charge in this cause is a Class D felony and that accordingly, the Court anticipates that a six man jury will be selected together with one alternate and in scheduling of the trial the Court has indicated that it anticipates completion of jury selection Monday morning with the State to proceed with its case with anticipated completion by the end of the Court

day Tuesday and defense, if any, anticipated to commence Wednesday. Such statement is made for purpose of assistance in issuance of subpoenas.

DATED this 13th day of September, 1983.

/s/ Douglas B. Morton
Douglas B. Morton, Judge
Fulton Circuit Court

* * *

MOTION FOR CONTINUANCE

[Dated] September 16, 1983
[Filed 9/19/83]
(Caption Omitted In Printing)

Comes now, O. Scott Reed, counsel pro se, and shows unto the court that he is confined in the Fulton County Jail under the above causes, and $25,000 bond. That he has been granted pauper status by this court, and is under the jurisdiction of the above court, and the care and custody of the Fulton County Sheriff. That he is scheduled for jury trial on September 19, 1983. That petitioner requests a continuance in order to correct the below violations of trial preparation and proper defense, and that granting of the requested continuance is necessary in order to have a fair and meaningful trial.

1. That the Fulton County Jail has flatly refused to permit any pretrial witness interview. This has in fact subjected petitioner to "surprise witness" presentation at trial, discrimination over prosecution, violation of law and civil rights, and restricted of defense preparation.

2. That petitioner has been restricted from pretrial examination of prosecution witnesses.

3. That petitioner has been refused and restricted from obtaining documents for discovery and trial use by the Fulton County Jail.

4. That although the court has, this week, tried to "overcome taking of depositions", it is not possible to interview 50 witnesses and obtain documentation in 3 days whereas subpoenas were requested one month ago, and still not issued.

5. That many of the above witnesses are Hostile, and pretrial witness examination is necessary for proper and meaningful defense.

6. That discovery violations prevent filing of discovery record, and use in trial of the above and below evidence which would prove petitioner's innocence.

7. That petitioner was forced to present witness list on pretrial discovery to prosecutor for pretrial interview and petitioner was in fact discriminated against in that he was denied same.

8. That action in the U.S. District Court, filed against circuit Judge and Sheriff, charging violations of civil rights, which is pending, requires judication [sic] or showing of court that it is not prejudicial to petitioner.

9. That petitioner has filed with the court, information, showing that petitioner is suffering "severe illness" . . . is under "specialist care" and hospital supervision, . . . for "Spinal Inflamation" [sic] and "High Blood pressure" . . . and is being restricted from proper medical treatment, contrary to "Doctors Orders", "is under heavy drug medication including 'codeine' every four hours", and is suffering great mental pain, and impairment, and is restricted from proper defense, therefrom, and shows unto the court that petitioner cannot properly aid in his defense, and asks, once again, for relief of restrictions, proper medical care, and hospital treatment and care as requested by "Specialist", and a continuance "only until proper treatment has been completed." See: petition for appointment of public Defender; and petition for Bond Reduction, in court record.

10. That new discovery has been filed by the State whereas "new witnesses, change of witnesses is made, and petitioner requests short delay, by which these witnesses can be interviewed etc.

11. Petitioner would remind, and request of the court to adhere to: Johnson vs. State, 384 N.E.2d 1039(7) whereas: "Court should allow maximum possible amount of information with which to prepare this case in advance of trial."

And to grant a short continuance for the above reasons, and to order relief of confinement violations as requested by petitioner.

Sworn to under penalties of perjury, as true to the best of my knowledge and belief.

/s/ O. Scott Reed

Clerk: Please prepare copies for all related parties as per court instructions.

Thank you.

* * *

In The Fulton Circuit Court

CAUSE NO. S-82-53 & S-82-55

(Caption Omitted In Printing)

PRE-TRIAL HEARING

BEFORE THE HONORABLE

DOUGLAS B. MORTON, JUDGE

FULTON CIRCUIT COURT

September 19, 1983

APPEARANCES:

Prosecutor for the State of Indiana

Richard A. Brown

For the Defendant – O. Scott Reed, Pro Se

Jere Humphrey, Stand-by Counsel

[3] COURT:

It is right at the hour of 9:30 on the morning scheduled for trial in the matter of O. Scott Reed. We've got a couple of substantial preliminary problems that have come up this morning.

The Court has received and not yet gotten file stamped a Motion to Change of Judge filed by Mr. Reed this morning. In addition, the Court has had under advisement up until this time a Motion for Reconsideration of July 15 Order. The Court will deny reconsideration of its order. It has reconsidered and it will not modify its order of July 15.

The Court further finds that the Motion for Change of Judge is not well taken or timely. It is based on the defendant's filing of a cause of action against the sheriff and the Fulton Circuit Court in Federal District Court for the Northern District.

Since every case has preliminary motions and since a defendant would always have the right to file an action based upon any preliminary rulings – it that were the basis for a grant of change of judge, nothing could ever be decided because the defendant could simply file it anytime he chose and disqualify the judge that is hearing the matter. Certainly there is nothing that has been directed against me personally and it isn't anything that has caused a problem for me.

Mr. Reed, did you have an opportunity to talk with Mr. Humphrey concerning the newspaper article that appeared Saturday?

[4] MR. REED:

Yes, sir, I did.

COURT:

Let me read into the record so that we know what we're talking about here what it is that has occurred.

As you will recall, the Court granted a Motion in Limine which barred the State from reference to any prior criminal record the defendant might have, subject only to use of such prior record as it relates to cross-examination of the defendant should he choose to testify and every indication from the defendant thus far is that he will not testify. In addition then keeping the State . . . allowing the

State to present such evidence that may be necessary for proof of the habitual offender charge.

In any event the jury was not to be made aware of any prior criminal record.

Before consideration of that habitual offender charge – if in fact, the defendant was convicted of the felony charge (inaudible).

Well, the newspaper article that appeared in the Saturday newspaper . . . front page . . . is entitled "35 Called for Trial Here. Thirty-five prospective jurors have been called for possible duty beginning Monday at 9:30 in the Fulton Circuit Court for O. Scott Reed's trial on theft and habitual criminal charges. Reed, 52, is accused of taking $4,666.00 from Auto Owners Insurance Company in November 1979 after falsely reporting a car as stolen. The habitual criminal charge is linked to alleged previous felony convictions [5] between 1954 and 1980. Reed has been in Fulton County Jail since April when he was transported here from the Federal penitentiary in Terre Haute. The two charges to be tried next week were filed in 1982. Ten people named in the list of forty-five prospective jurors have been excused for age and medical reasons. Those who are to report at the courthouse Monday by township are: "and then a listing of the jurors appears.

So what we end up with is a newspaper article that includes the jurors names and is therefore likely to attract their attention and a listing of the habitual. . . . well, a direct reference to the nature of the habitual criminal charge and the time frame of previous felony convictions without identifying them specifically.

Mr. Reed, it appears to me that in view of that we can do one of three things. Frankly, I'll do which ever one you want.

The first one is – you can waive any error that that may have created and we can go ahead today.

The second one is – we can simply continue the trial today and on the theory that this isn't going to go away over a short period of time, we can simply reschedule the trial for sometime substantially in the future and I would guess that's going to be late October to early November before I can possibly get the matter back into court if we were going to wait any substantial period of time.

The third thing is – that last Friday my trial for next week settled and that alternative is therefore available . . . [6] that we could simply recommence. . . . that I could excuse the jury that was called today on a mis-trial caused by that article, contact the newspaper to make sure we don't have a repeat, issue a new venire and call in new jurors for a week from tomorrow and commence the trial at that time.

Mr. Brown, thus far I haven't let you get a word in edgewise. How do you feel about that?

MR. BROWN:

It's up to you as far as I'm concerned. It's definitely a problem. I'm not going to jump up and down one way or the other, I guess.

COURT:

How do you feel about it, Mr. Reed?

MR. REED:

Well, your Honor, I think #1 that naturally I do not waive the error. I think it's quite obvious to everybody that it would definitely be an error in that the jury has read this. If they hadn't have read it, it would be brought to their attention by all their friends and everything and you are right, I am not taking the stand. It would, in fact, have to constitute an unfair trial.

Secondly, I would think that because of the Court's scheduled case that if the Court would accept the responsibility of showing that no error was caused in a trial at some short date which I don't believe can be done because in this county especially . . . this is a very big event. I think that everybody has to have known about it that would be connected with the jury and prospective jury and I couldn't [7] possibly get a fair trial with them knowing this.

I would actually move for a change of venue at this time and for some other reasons that I'll bring to the Court's attention when I'm allowed to answer some of these other motions orally.

I would again ask the Court in the light that it has already violated my 120 day maximum triable time for this. If the Court should find that I must stand trial here and that it's a further violation of my 120 day maximum time that I should be granted an immediate recognizance bond because it's not defendant's fault.

COURT:

It's not the State's fault either.

MR. REED:

No, I realize that, but I don't believe I should be made to suffer because . . . uh . . . still I'm an innocent person by law and I'm suffering great pain and damage from confinement as the Court's been made aware of by the Federal charges and at the end of this time I don't think I would be capable of standing trial. I think I'll probably be permanently confined to a hospital.

COURT:

I guess I didn't understand what you were trying to say concerning the Court accepting responsibility for a short duration. Ask me again.

MR. REED:

What I meant was that if the Court will accept the responsibility that these juries could hold a impartial and [8] fair trial, that they have not been influenced by this article or have read it and there would be no error against the defendant's rights to a fair trial. I'd like to have it be shown in the record that I did move for a change of venue and that I don't believe it can be done.

COURT:

I tend to agree with this jury – the people sitting out in the hallway now. What I'm suggesting is that we call . . . we excuse these people and I would call a new jury and let them come in Tuesday with no kind of pre-trial publicity that this one's gotten. . . . simply no cross reference to the other article. There would be a newspaper report, no doubt, that this trial was continued and I would report to them that it was simply done for procedural reasons and then make it known to them – not for

publication – but make it known why we had to continue and request that although they will treat it as a newsworth [sic] story that there is a jury called for next Tuesday and it is your trial upon the charge of theft.

By the way, it's not the reference to the Auto Owners and the amount and the dates that are involved since all those other things will quite properly be submitted to the jury anyvay [sic] and probably will even have to be discussed during voir dire, but it is, of course, the reference to the prior charges.

If I may say so, Mr. Reed, it appears to me that a motion for change of venue from the county is substantially premature at this point. There is certainly nothing that would show [9] that everybody in the county is tained [sic] by this. People tend to read these and forget about them if they're not directly involved. I would suggest to you that if you are, in fact, concerned that we are going to have a tained [sic] jury next week that the way to handle that is to go ahead, call them in next week and then bring them in individually and examine them and fine [sic] out if there is some thing that they know about. . . . if they know you from anything previously or ever heard of you. If we have a variety of reports from jurors saying, 'Oh, yeah, I know him. I read about him all the time in the time in the newspaper and I don't know if I could give him a fair trial or not because I know he has a substantial or something like that." Any kind of a comment like that . . . we simply exclude them and then if it turns out that we can't get a jury, then your motion for change of venue may well be appropriate, but that seems to me to be the most reasonable way of approaching that. Bring them in a week from now and then. . . . the Court

could simply reconsider the motion for change if it turns out that we can't get a jury . . . an unbiased jury. I don't perceive that to be the case right now. The Manning trials, the Scurlock trials . . . all of these are incidents that are related to the same location out there and frankly, it was not difficult in those cases to find people who were just unaware of anything that was going on. You tend to think that it's big news and important stuff to those of us that are right here involved in the middle of it, but the man on the street is much less atuned [sic] to it. How does the grab you?

MR. REED:

Well, I think . . . like I say, and I think the Court is aware that the habitual criminal charge and previous felony convictions, you know, plus just transport here from the Federal penitentiary from Terre Haute has to impress a great deal in this county. . . .

COURT:

I'm no arguing with you. I agree with you.

MR. REED:

And I just cannot believe that a fair trial can be had in a county where this is so small a population and where a news item of this. . . . becomes quite an incident! I just cannot believe this, especially in light of all the prior publicity from out at M & S Salvage.

COURT:

If that turns out to be a substantial problem, then we will find out about it at the time we have a jury that's not tainted with the habitual criminal story appearing in the

same article with their names. I perceive that as a real problem. But if we get them in here and people are uniformly reporting, 'Yeah, I know all about this.', that seems to me to be an appropriate time to reconsider that, but I don't see that a continuance for eight days – in order to obtain an untainted jury and to then proceed is an inappropriate method for proceeding.

Mr. Brown, does trying to commence this trial a week from tomorrow cause you any hideous scheduling problems with a gift of one week now can't cure?

[11] MR. BROWN:

Well, I don't know. What was it – a civil case that went out?

COURT:

For me it was a civil case and it was, in fact, a case that I was going to be trying in Cass County although my staff was going to be involved.

MR. BROWN:

I suspect it wouldn't. I can't think of anything. What are we talking about date-wise?

COURT:

It's starting September 27 and would probably run through 29 or 30.

MR. BROWN:

I can't think of anything but it shouldn't if you were going to be gone anyway. The primary (inaudible) was here so . . .

COURT:

If I didn't have you tied up, you probably weren't?

MR. BROWN:

Probably not or at least something that couldn't have been changed. The only thing, I think, that caused a problem and that would be for both of us and that would be the fact that people are so wide spread in this.

COURT:

You've got subpoenas to deal with. Yeah, I understand that.

MR. BROWN:

To do that all over again just to see if we're going to get one next week – that would be the only problem I could see.

[12] COURT:

I frankly don't perceive getting an unbiased jury in this case as a problem. I really don't. Now I could be surprised and people could come in here and that could turn out to be a real problem, but I don't foresee it.

Do you think you could get your witnesses realigned?

MR. BROWN:

Yes.

COURT:

Mr. Humphrey, treating the subpoenas that have been issued up until now as continuing and directing any

person who has received such a subpoena to reappear instead of the scheduled date of Wednesday, the 21st, instead for the same time on Thursday, the 29th. . . . with that proviso, do you see any difficulties with your scheduling?

MR. HUMPHREY:

I could just move things out. I've just got hearings that . . . you know, the judges in Marshall County realize should be subordinate and I shouldn't have any trouble.

COURT:

Could you move them all up to this week?

MR. HUMPHREY:

I don't think so.

COURT:

Mr. Reed, you keep waving your hands and suggesting you. . . .

MR. REED:

Yeah, I think it would be better and I would ask the [13] Court to make this in October or November . . . the earliest time. This would eliminate all the possibilities existing right now plus it would also allow the Federal judgment would probably be (inaudible) at that time which is against your Honor and this court. I think that would also be moved out of the way and. . . .

COURT:

I would be startled if that matter were concluded by then. You know, getting a case concluded in six

months . . . a civil case concluded in six months in Federal court is the speed of light. They don't happen that fast.

MR. REED:

But I'm sure of one thing . . . we've had a great deal of problem with the witnesses because of . . . you know, I haven't been able to conduct any pre-trial interviews as to this date as you know. I've been restricted. I've filed several motions on that.

One I think it would be proper in that it would also – if the Court should so find – that I be allowed to have my pre-trial witness examination and I would like to renew my motion for depositions, too.

COURT:

Mr. Reed, let's discuss the issue at hand.

MR. REED:

O. K.

COURT:

You are suggesting – as I understand you – that of the options that I gave you: #1. go ahead with it; #2. continue it and try it next week or #3. continue it to a late October [14] date. Of those three, you are requesting that we take the third?

MR. REED:

Yes, I am, your Honor.

COURT:

How does that grab you, Mr. Brown?

MR. BROWN:

It's fine with me. I think if that's what the defendant wants to do, it's more up to him than it is me. I think it's better in the sense from our standpoint and his, too, except he's in jail in realigning the witnesses, we got a lot more time to do it and you don't have the possibility of it going out again and having to call them all again and saying it didn't work again. I certainly have no objection to that.

COURT:

Do you have a two-month tour of Europe coming up or anything like that, Mr. Humphrey?

MR. HUMPHREY:

No. To make it easier for scheduling, there just isn't anything my first week in November that I couldn't move out.

COURT:

There is for me, but it's nothing that I can't cure. The jury's all checked in?

MRS. WALTERS:

Yes.

* * *

[Court Minutes, September 19, 1983]

* * *

Defendant in Court in person and accompanied by stand-by counsel Jere Humphrey. Also present Richard Brown, Prosecutor. Defendant now files written motion for change of Judge which motion is as follows: (H.I). The Court now denies the said motion for change of Judge as not being timely filed. In addition, the Court notes that it has previously taken under advisement the reconsideration of its July 15 order; the Court now denies modification of that said order.

The Court now notes for purposes of the record the newspaper story of September 17, 1983 as it appeared in *The Rochester Sentinel* which includes the names of prospective jurors as well as the nature of the charge in Cause Number S-82-53. It now appears that such reference is inappropriate.

Discussion amongst parties held and the Court indicates possible proceedings as follows: (1) that trial may continue at this time wihout [sic] further reference to the newspaper article, (2) that this jury panel may be dismissed and that the cause be reset for trial Tuesday, September 27, eight days from the present trial date with a new jury panel, called and with appropriate indications to the newspaper to avoid such future problems or (3) that the case be continued for a period of time presently estimated to be one to two months. Discussion held and dependent now indicates his desire that this cause be continued at this time and that it not be reset for hearing on September 27 but that instead continuance of approximately one month's duration be undertaken. Request

granted. Prospective jurors which have been summoned are now discharged and mistiral [sic] thereon declared.

The Court now further receives defendant's motion for continuance which motion is as follows: (H.I). The court now notes that such Motion is now made moot by court's previous rulings this date. The Court notes however that such motion for continuance does not appear to be well taken in that now showing has been made that any change of circumstances is likely to occur before trial and that defendant's circumstances at time of trial will be as alleged in his petition at any subsequent trial date.

The Court now directs that photo copies of written motion for change of judge and motion for continuance be submitted to J. Humphrey and R. Brown.

* * *

[Court Minutes, September 27, 1983]

* * *

Cause now reset for trial by jury for 9:30 a.m. Tuesday, October 18, 1983 with defendant to appear for trial at such time.

Court personally informs defendant of trial date and time with note that proposed preliminary and final instruction be submitted on or before October 14, 1983.

* * *

[Court Minutes, October 3, 1983]

* * *

Court now makes aware of certain bond language with defendant's bail bond relating to where defendant may go. Such language indicates defendant shall not leave the *jurisdiction* without approval of Court. The Court now indicates that it believes such language restricts defendant to the State of Indiana. (not just Fulton Co.) and that this Court has no limitation to his travel within Indiana.

* * *

[Court Minutes, October 18, 1983]

* * *

State in Court by Prosecutor and Defendant in Court in person and with stand-by counsel. Defendant renews all previous pre-trial motions. Court reiterates previous rulings but notes that defendant posted bond by corporate surety on Wednesday, Sept. 28, 1983 and that many arguments raised therein may be mooted. * * * Defendant renews request for change of venue from judge and submits record from S-83-9423 in Federal District Court. Motion Denied. Defendant now supplements witness list orally.

* * *

Prospective jurors sworn and voir dire held. Jury with one alternate selected, sworn, and impaneled. * * * Opening statements made and State commences evidence.

* * *

[Court Minutes, October 21, 1983]

* * *

Defense continues presentation of witness and rests. Defendant moves for appointment of counsel. Upon interview of defendant, the Court now determines that such appointment is appropriate and now appoints attorney Jere Humphrey, stand-by counsel to complete trial matters. The Court makes inquiry as to defense intention to re-open and defense indicates now that it has no necessity to re-open for presentation of further evidence. State presents rebuttal evidence and rests. Defendant has no sur-rebuttal evidence.

* * *

[Court Minutes, October 22, 1983]

* * *

Final arguments delivered and the Court delvers final instructions to the Jury. Jurey [sic] retires for deliberations at 11:00 a.m. and Court discharges alternate juror.

At 4:25 p.m., jury returns verdict as follows:

"We, the jury, find the defendant guilty of theft.

* * *

Date: 10-22-83 William F. Parman,
Foreman "

The Court returns jury to jury room and now makes findings upon verdict and enters judgment of conviction upon charge as Class D felony. Arguments heard upon preliminary instructions for habitual offender proceeding and preliminary instructions agreed to. The Court now delivers preliminary instructions and parties make opening statements. State presents evidence and rests. No evidence presented by defendant. * * * Final arguments delivered and Court delivers final instructions to jury. Jury retires for deliberations at 5:45 p.m. Jury returns verdict at 6:30 p.m. as follows:

"We, the jury, find the defendant O. Scott Reed to be a habitual offender.

Date: 10-22-83 William F. Parman
Foreman "

Jury discharged. Defendant remanded to custody of Sheriff and Court now orders Fulton Co. Probation Dept. to prepare presentence investigation report and recommendation. Cause now set for sentencing hearing for 9:00 a.m., Monday, November 14, 1983.

* * *

O. Scott REED, Appellant.

v.

STATE of Indiana, Appellee.

No. 484S143

Supreme Court of Indiana.

April 7, 1986.

Defendant was convicted by jury in the Fulton Circuit Court, Douglas B. Morton, J., of theft and was determined to be habitual offender, and received four-year sentence, which trial court enhanced by 30 years because of habitual offender determination, and defendant appealed. The Supreme Court, DeBruler, J., held that: (1) defendant failed to preserve for appeal issue that defendant was not tried within 120-day limit required by Interstate Agreement on Detainers; (2) circumstantial evidence was sufficient to prove defendant's identity as caller so as to render transcript of telephone conversation admissible; and (3) evidence was sufficient to prove beyond reasonable doubt that defendant was same person who committed prior felonies introduced at habitual offender hearing.

Affirmed.

Jere L. Humphrey, Plymouth, for appellant.

Linley E. Pearson, Atty. Gen., John D. Shuman, Deputy Atty. Gen., Indianapolis, for appellee.

DeBRULER, Justice.

This is a direct appeal from a conviction of theft, a class D felony, I.C. § 35-43-4-2, and from a habitual

offender determination. I.C. § 35-50-2-8. A jury tried the case. Appellant received a four year sentence for theft which the trial court enhanced by thirty years because of the habitual offender determination.

Appellant raises eight issues on appeal: (1) whether trial court erred in not discharging him pursuant to the Interstate Agreement on Detainers Act; (2) whether trial court erred in refusing his tendered "circumstantial evidence" instruction; (3) whether trial court erred in giving a "greatest weight of the evidence" instruction in a criminal case; (4) whether trial court erred in admitting into evidence a transcript of a telephone conversation which allegedly involved him; (5) whether trial court erred in not admitting into evidence on cross-examination a report mentioned on direct examination; (6) whether trial court erred in not permitting him to cross-examine a police officer concerning the location of a confidential vehicle identification number, (7) whether trial court denied him due process in permitting him to represent himself without, at the same time, affording him direct access to witnesses and legal facilities; (8) whether trial court erred in admitting into evidence at the habitual offender proceeding State's Exhibits #1, #2, #3, #4, and #5.

These are the facts from the record that tend to support the determination of guilt. In June 1979, the Wabash Valley Bank foreclosed on its security interest in a 1977 Ford pick-up truck, identification number F14 SCY 89 261. Wabash Valley Bank then sold the truck to the appellant for thirteen hundred dollars in cash. In August 1979, the First National Bank of Rochester loaned M. & S. Salvage four thousand dollars; the same truck became the

collateral for the loan. Appellant signed the note. The First National Bank of Rochester regarded appellant as the owner of M. & S. Salvage, and the appellant had communicated to others that he was the owner of M. & S. Salvage.

On October 6, 1979, appellant reported the same truck as stolen from a K-Mart parking lot in South Bend. Auto Owner's Insurance Company paid $4,660 on the resulting loss claim. Marsha L. Reed had title to the truck and the insurance company had issued the policy in her name. Marsha Reed was actually Marsha Lee, a woman with whom appellant was living at the time. The insurance proceeds were used to pay the remaining sum of $3,101.52 to the First National Bank of Rochester on the note that appellant signed.

In February 1980, state police, in executing a search warrant on the premises of M. & S. Salvage, discovered a license plate, issued to Marsha Reed for the same truck. A computer search indicated to the police that the truck had been stolen. A woman, who lived with a M. & S. Salvage employee, told the police that she saw M. & S. Salvage employees transferring parts from a blue pick-up truck to a red pick-up truck. Robert Smith, another employee, told the police that he had paid the appellant $300.00 for a frame and running gear on which he had placed his blue cab. Smith never received a certificate of title from appellant for the frame. Subsequently, Smith sold the reconstructed truck to Shelton under the old blue truck's certificate of title. Police in Tennessee located Shelton's truck, and then discovered a concealed vehicle identification number on its frame. The number was F14 SCY 89 261; the same number on the frame of the truck appellant

reported stolen from the K-Mart parking lot in South Bend.

I

Appellant argues that the trial court should have discharged him pursuant to the Interstate Agreement on Detainers (IAD) I.C. § 35-33-10-4 because he was not tried within 120 days of his arrival in Fulton County. The pertinent sections of the statute are set forth here:

> Art. 1 – [It] is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints.
>
> Art. 4(c) – In respect of any proceeding made possible by this Article, trial shall be commenced within one hundred twenty [120] days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.
>
> Art. 5(c) – If the appropriate authority shall refuse or fail to accept temporary custody of said person or in the event that an action on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article 3 or Article 4 hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

The record indicates that the Federal Penitentiary at Terre Haute transferred him to Fulton County on April 27, 1983. On May 4, 1983, on May 23, 1983, and on June 20, 1983, appellant filed separate motions alleging that his transfer to Fulton County was in violation of the IAD; he also requested a hearing on the matter. On June 27, 1983, the trial court set the trial date for September 13, 1983; which was beyond the requisite 120 day period. Appellant did not object to this trial setting. On June 29, 1983, he filed a Motion for Relief from Violations. In the motion he alleged violations of IAD § 35-33-10-4, art. 5(d) and 5(h). These allegations related to appellant's care while in the custody of Fulton County and not to the 120 day limit. On July 15, 1983, the trial court in an order made the following ruling concerning appellant's previous IAD motions.

> "That upon defendant's motion for dismissal or 'relief from violations' pursuant to the Detainer's Act, the Court does now deny the said motions; defendant has failed to provide any showing of the terms of the Act relied upon or the particular acts of the State to which he objects. There appearing on its face no violation of such Act, the court does rule accordingly."

Despite this ruling's emphasis on appellant's failure to allege specific violations of the IAD, as of this ruling, we discern that appellant alleged one specific violation: that is that Fulton County violated article 5(d) and 5(h) of the IAD in regards to the type of care he was to receive while in their custody. However, it was not until July 26, 1983, that appellant made a general demand that trial be held within the time limits of the IAD. In a pretrial conference, on August 1, 1983, the court conducted an extensive

hearing on the IAD, however, appellant did not reiterate his objection based on the time limit. Subsequently, the trial court reset the trial date from September 13, 1983, to September 19, 1983. Appellant did not object to this resetting. Between August 1, 1983, and August 29, 1983, appellant's actions indicated that he intended to proceed to trial on the date as reset i.e. he filed a motion in limine, a petition for subpoena, a petition for depositions upon oral examination, and a petition for production of documentary evidence. On August 29, 1983, he filed an Affidavit of Emergency, alleging that the 120 day period had passed and that the charges against him be dismissed.

A defendant applying for discharge pursuant to the Interstate Agreement on Detainers may be precluded from relief if he fails to object to a date beyond the requisite period at the time the date was set or during the remainder of the time limit. See *Scrivener v. State* (1982), Ind., 441 N.E.2d 954, 956; *Pethtel v. State* (1981), Ind.App., 427 N.E.2d 891.

Appellant claims all of his objections based on the IAD properly preserve the "120 day limit" issue for appeal. Appellant is incorrect. The relevant times when appellant should have objected were on June 27, 1983, the date the trial was set, and August 1, 1983, the date the trial was reset. However, appellant did not object at these times to the setting or resetting of the trial date beyond the requisite 120 day period. Appellant's Affidavit of Emergency on August 29, 1983, alleging the expiration of the 120 day period did not qualify as a timely objection to preserve his rights under the IAD.

II

Appellant argues that the trial court erred in refusing his tendered "circumstantial evidence" instruction.

> "Instructions upon circumstantial evidence are not required to be given where the evidence of guilt is direct and positive or where some is direct and some is circumstantial." *Hitch v. State* (1972), 259 Ind. 1, 12, 284 N.E.2d 783, 789.

Faught v. State (1979), 271 Ind. 153, 390 N.E.2d 1011, 1017.

Here, there is direct evidence that appellant negotiated the purchase of the truck for $1300, that he negotiated a $4,000 loan with the truck as collateral, that he reported the truck as stolen, and that he sold the truck's frame. The existence of this direct evidence permitted the case to be submitted to the jury without a discrete instruction on how to deal with a case resting solely upon circumstantial evidence.

III

Appellant argues that the trial court erred in giving a "greatest weight of the evidence" instruction in a criminal case. Appellant objected to the instruction at trial. He contends that the instruction is similar to a "preponderance of the evidence" instruction in a civil case and that, as a result, the instruction necessarily confused the jury as to the "proof beyond a reasonable doubt" standard.

The challenged instruction No. 12 is set forth here:

> You are the sole judges of the weight of the evidence. The evidence that has the greatest weight is that evidence which most strongly convinces you of its truthfulness. You should consider all of the facts and circumstances in evidence to determine what evidence is of the greatest weight.
>
> The weight of the evidence is not necessarily determined by the number of witnesses testifying concerning it. You may find that the testimony of a smaller number of witnesses has more strongly convinced you of its truthfulness and is therefore of the greater weight.

This instruction does not discuss the standard of proof required for conviction; it merely stresses that the truthfulness of evidence is more important than the quantity of evidence. Furthermore, we do not discern that this instruction confused the jury as to the "reasonable doubt" standard, especially in light of the other instructions the trial court submitted to the jury stating the jury must be convinced of the guilt of the defendant beyond a reasonable doubt before he can be convicted. The trial court clearly instructed the jury as to the proper standard of proof to be applied in a criminal case.

IV

Appellant argues that the trial court erred in admitting into evidence over his objection a transcript of a telephone conversation which allegedly occurred between him and an insurance company representative. He contends that the State did not lay a sufficient foundation to identify him as one of the speakers.

Identity of the declarant in a telephone conversation may be established by circumstantial evidence. *Indiana*

Union Traction v. Scribner (1911), 47 Ind.App.621, 93 N.E. 1014, *Greenberg v. Greenberg* (1921), 79 Ind.App. 218, 133 N.E. 18, See also, 79 A.L.R.3d 79.

> [If] the witness has received. . . . a telephone call out of the blue from one who identified himself as "X" this is not sufficient authentication of the call as in fact coming from X. The requisite additional proof may take the form of testimony by the witness that he is familiar with X's voice and that the caller was X. *Or authentication may be accomplished by circumstantial evidence pointing to X's identity as the caller, such as if the communication received reveals that the speaker had knowledge of facts that only X would be likely to know.*

McCormick et al. on Evid.3d HBLE, § 226.

Here, the state has proven appellant's identity as the caller circumstantially because the telephone conversation transcript reveals that the speaker had knowledge that only appellant would be likely to know i.e. his address, phone number, social security number, the details and features of the truck, and the reported theft of the truck.

V

Appellant argues that the trial court erred in not admitting into evidence on cross-examination a police report mentioned on direct examination.

On direct examination, Officer Phenice referred to a police report, and he testified about the circumstances surrounding the report as follows:

Q. Did he (Gerald Smith) also volunteer anything as to where the truck came from.

A. He did. He mentioned several names. However, I only mentioned one name in the report. I did not write notes at the time. I wrote them when I went back to the office. I did cue in on one particular name that was mentioned.

Q. Who was that?

A. It was Denver Manning.

Q. Why did you cue in on that so to speak?

A. The name Denver Manning had been in other investigations I was involved with in the Gary area. I did not know who was being particularly investigated in Trooper Rayl's case. The name Manning however was put in my reports simply because that was the name I was familiar with. I was not familiar with the other names that were mentioned.

Q. Do you remember any of the other names?

A. I do remember Scott Reed's name.

On cross-examination Officer Phenice identified his report, earlier testified to, Exhibit A, and testified that it said nothing about Scott Reed. Appellant then attempted to introduce the actual written report in order to demonstrate that it referred only to Denver Manning as a possible suspect. The State objected on the grounds that the report was superfluous in that the Officer had thoroughly testified as to its contents, and therefore, it would distract the jury.

> it is well settled that limiting the scope of cross-examination is a function within the sound discretion of the trial judge. Only upon a showing of a clear abuse of such discretion will this Court order a reversal. *Haak v. State* (1981), Ind., 417, N.E.2d 321, 322, *Cobb v. State* (1981), Ind., 412 N.E.2d 728, 739.

Wireman v. State (1982), Ind., 432 N.E.2d 1343.

Here, although the trial court refused to admit the report into evidence, appellant conducted a thorough and productive cross-examination of Officer Phenice concerning this report. Consequently, the trial court's refusal to admit the report into evidence did not substantially impinge upon appellant's right to cross-examination.

VI

Appellant argues that the trial court erred in not permitting him to cross-examine a police officer concerning the location of a confidential vehicle identification number (VIN).

On direct-examination, the trial court admitted into evidence State's Exhibit #10, a photograph of the VIN, without objection. On cross-examination, the appellant asked the police officer the following questions:

> Q. Exactly where is it (the VIN) located?
>
> A. Well, that's confidential information.
>
> Q. Well, I don't think it should be confidential in this trial.
>
> A. Well, that would be up to the judge . . .

> Court: What would the relevancy of the location be in this trial, Mr. Reed? . . .
>
> Mr. Reed: Well, If . . . uh . . . there are several Possibilities one that the man . . . there could be more than one of these numbers, for instance. It could have been altered or made quite accessible to someone else to alter it or change it. I think that it's a piece of evidence in this case . . . I should be able to cross-examine and use full knowledge about it.

The trial court then disallowed the question on the basis that there was no connection between its precise location and its possible alteration.

Appellant relies on *Burton v. State* (1984), Ind., 462 N.E.2d 207. There, only five to seven out of eleven characters of the VIN were discernible from a photograph of the VIN that the trial court admitted into evidence over defendant's objection. The defendant requested the location of the VIN in order to examine all of its characters so that he could effectively cross-examine the Officer about the VIN. The vehicle was in the custody of the police. This Court ruled that the defendant had a right to inspect the VIN on the vehicle so that he could conduct an effective cross-examination.

Here, appellant did not request to inspect the VIN on the truck, he merely wanted to know the location of the VIN. Verbal testimony at trial describing the location of the VIN, by itself, does not tend to prove or disprove that the VIN was altered; consequently, the precise location of the VIN was not then relevant, and the trial court did not prejudice appellant's right to cross-examination.

VII

Appellant argues that the trial court denied him due process of law in permitting him to represent himself without, at the same time, affording him direct access to witnesses and legal facilities.

After inquiring about appellant's decision to represent himself and after giving appellant extensive warnings about the dangers of self-representation, the court appointed stand-by counsel for appellant. The trial court also ordered that stand-by counsel should provide appellant with legal materials and be available to file necessary motions and other pleadings.

Most of the appellant's contentions concern the difficulty he had in subpoenaing and deposing witnesses. The source of his difficulty was the fact that he was incarcerated. Any problem appellant may have had would have been non-existent if he had used his stand-by counsel properly. The purpose of stand-by counsel is to lessen the barriers resulting from incarceration, and it provides a defendant with the opportunity to improve the quality of his self-representation. See *Engle v. State* (1984), Ind., 467 N.E.2d 712.

The trial court did not deny appellant due process of law.

VIII

Appellant argues that the trial court erred in admitting into evidence during the habitual offender proceeding State's Exhibits #1, #2, #3, #4, and #5.

> Certified copies of judgments or commitments containing the same or similar name as defendant's may be introduced to prove the commission of prior felonies. However, there must be other supporting evidence to identify defendant as being the same person named in the documents. *Estep v. State* (1979), 271 Ind. 525, 394 N.E.2d 111; *Smith v. State*, (1962), 243 Ind. 74, 181 N.E.2d 520.

State's Exhibit #1 consists of an information and a transcript from *State v. Orrin Scott Reed*, Cause No. 2619. The information is for "setting fire to an auto," and it reveals that the date of commission for the offense was June 24, 1951. The transcript reveals that the defendant pled guilty on April 13, 1954, that he received a one to three year sentence on April 13, 1954, and that he was 22 years of age.

State's Exhibit #2 consists of an information, a verdict form, and a pre-sentence report from *State v. Orin Scott Reed*, Cause No. 3977. The information is for grand larceny, and it reveals that the date of commission for the offense was January 14, 1959. The verdict form reveals that a jury found the defendant guilty on February 11, 1960, and that he received a one to ten year sentence on February 11, 1960. The pre-sentence report revealed the defendant's social security number as 310-30-1049, his

birth date as July 18, 1931 and other descriptive information, including a conviction for arson for which he was sentenced one to three years on April 13, 1954.

State's Witness Atchley, the Fulton County Jailer, testified that Appellant told him that his social security number was 310-30-1049. State's Witness Rayl, a state police officer, testified that he transported appellant to Fulton County from the Federal Penitentiary in Terre Haute. In addition, he testified that the penitentiary records indicated that appellant's birth date was July 18, 1931.

State's Exhibit #6 consists of appellant's driving record from the Department of Motor Vehicles. It contains appellant's social security number, 310-30-1049, Birth date, July 18, 1931, and other descriptive information.

Appellant objected to State's Exhibits #1, and #2 on the basis that the sentences had not been demonstrated and that there was no evidence demonstrating that appellant was the same person that committed the felonies described in the exhibits.

To begin with, it is clear that the sentences were proven beyond a reasonable doubt. The sentence for the 1951 felony is referred to in the transcript in State's Exhibit #1, and the sentence for the 1959 felony is referred to in the verdict form in State's Exhibit #2.

Second, there is sufficient evidence to prove beyond a reasonable doubt that appellant was the same person who committed the 1951 felony and the 1959 felony. The social security number, evidenced by the testimony of

Atchley, by a telephone conversation transcript introduced into evidence at the guilt phase of the trial, and by appellant's driving record, matches the social security number referred to in the presentence report for the 1959 felony. The birthdate, evidenced by Rayl's testimony and by appellant's driving record, matches the birth date referred to in the presentence report for the 1959 felony. Also, the description of appellant's appearance in his driving record is substantially similar to the description of his appearance in the presentence report for the 1959 felony. This is sufficient evidence to identify appellant as the perpetrator of the 1959 felony.

The presentence report for the 1959 felony mentions that appellant received a one to three year sentence for arson on April 13, 1954. This is the sentence and the sentencing date mentioned in the transcript of the 1951 felony. The offense of arson is also substantially similar, if not the equivalent, to the offense of setting fire to an auto. Also, the transcript of the 1951 felony indicates that appellant was born in 1931 or 1932. This is sufficient to identify appellant as the perpetrator at the 1951 felony. Furthermore, it should be noted that the names on the 1951 felony and 1959 felony are nearly identical to appellant's name. This tends to give evidentiary force to the argument that appellant was the perpetrator of the 1951 felony and the 1959 felony.

Because of our conclusion that the State demonstrated that appellant committed the 1951 felony and the 1959 felony, we need not address appellant's contentions concerning State's Exhibits #3, #4, and #5. Conviction and sentence affirmed.

GIVAN, C.J., and PIVARNIK, SHEPARD and DICKSON, JJ., concur.

STATE OF INDIANA)		IN THE FULTON
	) SS:	CIRCUIT COURT
COUNTY OF FULTON)		CALENDAR TERM 1988
STATE OF INDIANA, Plaintiff,	)	CAUSE NUMBERS S-82-53 S-82-55
vs.	)	
ORRIN SCOTT REED, Defendant.	)	RULING AND ORDER DENYING MOTION FOR POST CONVICTION RELIEF

The Court, having had under advisement the amended Petition For Post Conviction Relief, now finds and rules as follows:

That Petitioner-Defendant, Orrin Scott Reed, filed his Petition For Post Conviction relief August 15, 1985. That said Petition was amended June 10, 1988, and hearing thereon was held June 10, 1988, and at the close of hearing the Court took said matters under advisement. Petitioner-Defendant, Orrin Scott Reed, contended by his amended Petition for Post conviction Relief that: Reed was denied a pre-transfer hearing and deprived of the right to trial within one hundred and twenty (120) days. Reed also contends that he was denied counsel for three (3) months and as a result there was a violation of his rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article One, Sections Twelve and Thirteen of the Indiana Constitution. Reed also asserts he was denied due process of law and a fair trial under the Fifth and Fourteenth Amendments of

the United States Constitution as a result of the actions of the Court, the Sheriff, and existing jail conditions. Reed also contends he was denied due process of law under the Fifth and Fourteenth Amendments to the United States Constitution and Section Twelve of the Indiana Constitution because provisions of Indiana code 35-33-10-4, Article four, were not met. Petitioner-Defendant Reed also contends he was denied effective assistance of counsel. Petitioner-Defendant Reed asserts also that his rights were violated because he was denied reasonable access to medical care while in the county jail.

The Court finds that Petitioner-Defendant Reed's contention that he was wrongfully denied a pre-transfer hearing and that because his attorney failed to set this contention forth on the appellate level, establishes his claim of ineffective assistance of appellate counsel, is without merit. The record establishes that Petitioner-Defendant Reed's attorney reasoned that the denial of a pre-transfer hearing (by federal authorities was not proper for review in the State Court on appeal. This Court agrees with Reed's attorney on this point and this Court finds that such failure to raise the issue of denial of a pre-transfer hearing by the federal authorities, when the case was taken on appeal to the Indiana Supreme Court, does not substantiate the claim of ineffective assistance of counsel. Petitioner-Defendant has asserted no other substantial reasons to support his contention that his attorney on appeal was ineffective.

On the trial level, the record establishes that Reed chose to proceed pro-se and that the Court appointed Attorney Humphrey as stand-by counsel and that Petitioner-Defendant Reed was promptly conferred with by

Attorney Humphrey after his appointment. The record also shows that only once during trial did the Petitioner-Defendant seek the help of Humphrey, and only when it appeared to Reed that he was losing his case. He then left the questioning of one witness to Attorney Humphrey. Attorney Humphrey assisted Reed in preparation for the trial by preparing Instructions for trial and preparing some subpoenas, and conferred with Reed before and during trial. This Court rules that Petitioner-Defendant Reed has failed to meet his burden to sustain his claim that he was denied the effective assistance of trial counsel or appellate counsel. Defendant-Petitioner's claim of denial of effective assistance of counsel on the trial Court level was directed against the Court and not against his trial counsel and is a separate issue from his counsel being ineffective. The issue of Petitioner-Defendant being denied effective assistance of counsel by the Court was ruled on and rejected by the Indiana Supreme court in its Opinion, 491 N.E.2d 182, in this case, and this issue is now res judicata.

This Court also finds that the Indiana Supreme Court, in its Opinion in this case filed marked April 7, 1986, and Certified May 7, 1986, reviewed the trial Court's conduct in not discharging Reed pursuant to the Interstate Agreement on Detainers Act, and reviewed the conduct of the trial Court with respect to the due process issues and in each instance the Indiana Supreme Court ruled against Petitioner-Defendant Reed on those matters; hence, those issues are res judicata by reason of the Indiana Supreme Court Opinion. The Indiana Supreme Court Opinion also disposed of the issue of trial being denied within the time limits of the IAD, by finding

Defendant Reed did not make a demand for trial within the time limits of IAD until July 26, 1983, and that on August 1, 1983, the Court conducted an extensive hearing on the IAD, but Reed did not reiterate his objection based on the time limit. The Indiana Supreme Court rejected Reed's contention that his rights were violated because he was not tried within one hundred and twenty (120) days. This issue is also res judicata by reason of the Opinion of the Indiana Supreme Court in this case.

This Court also finds that the Petitioner-Defendant Reed's claim that the Sheriff denied him access to reasonable medical care while confined in the county jail is without merit since Petitioner-Defendant Reed has also asserted on Page 5 of his Supplemental Attachment Of Facts Which Support The Grounds Set Forth (attached to the Motion For Post Conviction Relief, to-wit: "20a. That Petitioner was in great pain, under the care of a specialist and under drug medication and influence of drugs, that the noise and lack of lighting made conditions nearly impossible." Also this Court notes that Petitioner-Defendant Reed failed to raise on his appeal to the Supreme Court the alleged denial of reasonable medical care for Reed when he was confined in the Fulton County Jail, and the matter is therefore waived. Even had it not been waived by Reed's failure to raise the issue on appeal, this Court finds that Petitioner-Defendant Reed has failed to meet the burden of proof to establish that the Sheriff denied him reasonable medical care while confined in the Fulton County Jail and is not believable.

Finally, this Court finds that all of Petitioner-Defendant Reed's issues raised by the Amended Petition For Post Conviction Relief, except for the issues of whether

Reed was denied his Constitutional Rights by the State of Indiana because he did not have a pre-transfer hearing, and whether Reed was denied effective assistance of appellate counsel, and whether Reed was denied reasonable medical relief by the Sheriff while confined in the Fulton County Jail, were all resolved and are res judicata by reason of the Indiana Supreme Court decision in this case (Reed v State, 491 N.E.2d 182 [Ind. 1986]) or by reason that Petitioner failed to raise the issues on appeal and therefore they are waived. The three issues not disposed of by the Indiana Supreme Court decision have been ruled upon by this Court in this decision.

The amended Petition For Post conviction Relief is hereby denied.

ORDERED AND RULED this 26 day of August, 1988.

/s/ R. Alexis Clark
R. Alexis Clarke,
Special Judge
Fulton Circuit Court

ATTORNEYS FOR APPELLANT:

SUSAN K. CARPENTER
Public Defender of Indiana

JULIA J. CASEY
Deputy Public Defender

309 West Washington Street
Suite 501
Indianapolis, Indiana 4620

ATTORNEYS FOR APPELLEE:

LINLEY E. PEARSON
Attorney General of Indiana

LOUIS E. RANSDELL
Deputy Attorney General

Office of Attorney General
219 State House
Indianapolis, Indiana 46204

IN THE
COURT OF APPEALS OF INDIANA
FOURTH DISTRICT

ORRIN SCOTT REED, Appellant (Petitioner), -v- STATE OF INDIANA, Appellee (Respondent).	))))))))	No. 25A04-8903-PC-95

APPEAL FROM THE FULTON CIRCUIT COURT
The Honorable R. Alexis Clarke, Judge
Cause No.'s S-82-53 and S-82-55

MILLER, J.

MEMORANDUM DECISION

Defendant-appellant Orrin Scott Reed appeals the denial of his petition for post-conviction relief challenging his conviction for theft and habitual offender finding. He raises six issues on appeal which we consolidate and restate as follows:

I. Whether Reed's constitutional rights were violated when he did was denied a pre-transfer hearing prior to his transfer to state custody, and when he was not tried within 120 days.

II. Whether Reed was improperly denied his right to counsel.

III. Whether Reed was denied his constitutional rights to counsel and to prepare his case due to the conditions in which he was incarcerated.

IV. Whether Reed was denied effective assistance of counsel during his direct appeal.

V. Whether the post-conviction court erred in denying Reed's allegations on the basis of waiver and *res judicata*.

FACTS

On December 15, 1982, Reed was charged in Fulton County with theft and as a habitual offender. At the time the charges were filed, Reed was in federal custody at the United States Penitentiary in Terre Haute, Indiana. On March 9, 1983, pursuant to the Interstate Agreement on

Detainers (IAD)[1], Fulton County requested temporary custody of Reed from the federal penitentiary in Terre Haute. Pursuant to this agreement, Reed was transferred to Fulton County on April 27, 1983. An initial hearing on the Fulton County charges was held on May 9, 1983. At this time, Reed informed the court he wanted an attorney, but wished to lead the case himself. The court appointed Jere Humphrey as stand-by counsel. Over the next two months, Reed filed several handwritten motions seeking access to appointed counsel and/or legal materials. He also filed handwritten motions alleging violations of the IAD. A jury trial was held in October, 1983. The jury found Reed guilty of theft. The jury also found Reed to be an habitual offender. On November 14, 1983, Reed was sentenced to a four (4) year term on the theft conviction, enhanced by thirty (30) years due to the habitual offender determination. Reed's convictions and sentence were upheld on appeal. *Reed v. State* (1986), Ind., 491 N.E.2d 182. On August 15, 1985, Reed filed a *pro se* petition for post-conviction relief alleging generally, that the trial court had violated provisions of the IAD and, he was denied effective assistance of counsel. An evidentiary hearing was held on June 10, 1988. Reed was represented by Julia Casey, a Deputy Public Defender. At this hearing, Reed testified he encountered great difficulty contacting appointed counsel and preparing for his trial. He stated the difficulties he experienced were due to three factors: (1) the court denied his repeated requests for relief, (2) the sheriff restricted phone and visitor privileges, confiscated or prohibited legal material, delayed medical care

---

[1] IND. CODE §35-33-10-4 (West's 1986).

and failed to deliver subpoenas and (3) conditions existed at the jail hampered his ability to prepare for trial – noise level and lack of lighting. Jere Humphrey, the attorney appointed as stand-by counsel for Reed at trial also testified at this hearing. On August 26, 1988, the post-conviction court denied Reed's petition entering the following order:

> The Court, having had under advisement the amended Petition for Post-Conviction Relief, now finds and rules as follows:
>
> That Petitioner-Defendant, Orrin Scott Reed, filed his Petition for Post-Conviction Relief August 15, 1985. That said Petition was amended June 10, 1988, and hearing thereon was held on June 10, 1988, and at the close of hearing the Court took said matters under advisement. Petitioner-Defendant, Orrin Scott Reed, contended by his amended Petition for Post-Conviction Relief that: Reed was denied a pre-transfer hearing and deprived of the right to trial within one hundred and twenty (120) days. Reed also contends that he was denied counsel for three (3) months and as a result there was a violation of his rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article One, Sections Twelve and Thirteen of the Indiana Constitution. Reed also asserts he was denied due process of law and a fair trial under the Fifth and Fourteenth Amendments of the United States Constitution as a result of the actions of the Court, the sheriff, and existing jail conditions. Reed also contends he was denied due process of law under the Fifth and Fourteenth Amendments to the United States Constitution and Section Twelve of the

Indiana Constitution because provisions of Indiana Code § 35-33-10-4, Article Four, were not met. Petitioner-Defendant Reed also contends he was denied effective assistance of counsel. Petitioner-Defendant Reed asserts also that his rights were violated because he was denied reasonable access to medical care while in the county jail.

The Court finds that Petitioner-Defendant Reed's contention that he was wrongfully denied a pre-transfer hearing and that because his attorney failed to set this contention forth on the appellate level, establishes his claim of ineffective assistance of appellate counsel, is without merit. The record establishes that Petitioner-Defendant Reed's attorney reasoned that the denial of a pre-transfer hearing (by federal authorities) was not proper for review in the State Court on appeal. This Court agrees with Reed's attorney on this point and this Court finds that such failure to raise the issue of denial of a pre-transfer hearing by the federal authorities, when the case was taken on appeal to the Indiana Supreme Court, does not substantiate the claim of ineffective assistance of counsel. Petitioner-Defendant has asserted no other substantial reasons to support his contention that his attorney on appeal was ineffective.

On the trial level, the record establishes that Reed chose to proceed *pro se* and that the Court appointed Attorney Humphrey as stand-by counsel and that Petitioner-Defendant Reed was promptly conferred with by Attorney Humphrey after his appointment. The record also shows that only once during trial did the Petitioner-Defendant seek the help of Humphrey,

and only when it appeared to Reed that he was losing his case. He then left the questioning of one witness to Attorney Humphrey. Attorney Humphrey assisted Reed in preparation for the trial by preparing Instructions for trial and preparing some subpoenas, and conferred with Reed before and during trial. This Court rules that Petitioner-Defendant Reed has failed to meet his burden to sustain his claim that he was denied the effective assistance of trial cousnel [sic] or appellate counsel. Defendant-Petitioner's claim of denial of effective assistance of counsel on the trial Court level was directed against the Court and not against his trial counsel and is a separate issue from his counsel being ineffective. The issue of Petitioner-Defendant being denied effective assistance of counsel by the Court in its Opinion, 491 N.E.2d 182, in this case, and this issue is now *res judicata.*

This Court also finds that the Indiana Supreme Court, in its opinion in this case filemarked April 7, 1986, and certified May 7, 1986, reviewed the trial Court's conduct in not discharging Reed pursuant to the Interstate Agreement on Detainers Act, and reviewed the conduct of the trial Court with respect to the due process issues and in each instance the Indiana Supreme Court ruled against Petitioner-Defendant Reed on those matters; hence, those issues are *res judicata* by reason of the Indiana Supreme Court opinion. The Indiana Supreme Court opinion also disposed of the issue of trial being denied within the time limits of the IAD, by finding Defendant Reed did not make a demand for trial within the time limits of IAD until July 26, 1983, and that on August 1, 1983, the Court conducted an extensive hearing on the

IAD, but Reed did not reiterate his objection based on the time limit. The Indiana Supreme Court rejected Reed's contention that his rights were violated because he was not tried within one hundred and twenty (120) days. This issue is also *res judicata* by reason of the opinion of the Indiana Supreme Court in this case.

This Court also finds that the Petitioner-Defendant Reed's claim that the sheriff denied him access to reasonable medical care while confined in the county jail is without merit since Petitioner-Defendant Reed has also asserted on Page 5 of his Supplemental Attachment of Facts Which Support the Grounds Set Forth (attached to the Motion For Post-Conviction Relief), to-wit: "20a. That Petitioner was in great pain, under the care of a specialist and under drug medication and influence of drugs, that the noise and lack of lighting made conditions nearly impossible." Also this Court notes that Petitioner-Defendant Reed failed to raise on his appeal to the Supreme Court the alleged denial of reasonable medical care for Reed when he was confined in the Fulton County Jail, and the matter is therefore waived. Even had it not been waived by Reed's failure to raise the issue on appeal, this Court finds that Petitioner-Defendant Reed has failed to meet the burden of proof to establish that the sheriff denied him reasonable medical care while confined in the Fulton County Jail and is not believable.

Finally, this Court finds that all of Petitioner-Defendant Reed's issues raised by the Amended Petition for Post-Conviction Relief, except for the issues of whether Reed was denied his constitutional rights by the State of

Indiana because he did not have a pre-transfer hearing, and whether Reed was denied effective assistance of appellate counsel, and whether Reed was denied reasonable medical relief by the sheriff while confined in the Fulton County Jail, were all resolved and are *res judicata* by reason of the Indiana Supreme Court decision in this case *Reed v. State*, 491 N.E.2d 182 Ind. 1986 or by reason that Petitioner failed to raise the issues on appeal and therefore they are waived. The three issues not disposed of by the Indiana Supreme Court decision have been ruled upon by this Court in this decision.

The Amended Petition for Post-Conviction Relief is hereby denied.

Reed filed a Motion to Correct Errors on October 27, 1988, which the trial court denied on December 14, 1988. (Additional facts appear below where relevant.)

DECISION

Before we discuss the issues in this case, we note that, in a post-conviction proceeding, the petitioner bears the burden of proving his grounds for relief by a preponderance of the evidence. The judge who presides over the post-conviction hearing possesses exclusive authority to weigh the evidence and determine the credibility of witnesses. This court will not set aside the trial court's ruling on a post-conviction petition unless the evidence is without conflict and leads solely to a result different from that reached by the trial court. *Stewart v. State* (1988), Ind., 517 N.E.2d 1230, 1231.

ISSUE I

Reed alleges his constitutional rights were violated when he was deprived of a pre-transfer hearing and was not brought to trial within 120 days after his transfer to state court pursuant to the IAD.

Regarding Reed's claim that he was not brought to trial within 120 days after his transfer to Fulton County, the post-conviction court noted that our supreme court disposed of this issue in Reed's direct appeal and thus, this issue was *res judicata*. We agree. In *Reed, supra*, our supreme court determined that Reed had failed to preserve his rights under the IAD to be brought to trial within 120 days. As our supreme court disposed of this issue in Reed's direct appeal, he may not raise it as a ground for post-conviction relief. *See Williams v. State* (1986), Ind.App., 489 N.E.2d 594 (defendant barred by doctrine of *res judicata* from raising the issue of newly discovered evidence as ground for post-conviction relief, where the defendant had unsuccessfully raised this issue on direct appeal).

Next, Reed claims he was denied a pre-transfer hearing (by federal authorities) pursuant to Article 4 of the IAD prior to his transfer to Fulton County. Although Reed cites authority to support his position that he is entitled to a pre-transfer hearing, he does not indicate in his brief whether he objected to this IAD violation at trial. Our supreme court has held that violations of provisions of the IAD are waived unless the error is timely raised at trial. *Dotson v. State* (1984), Ind., 463 N.E.2d 266, 269. Additionally, this court has held that even though a

defendant's presence in Indiana for trial was secured without complying with the terms of the IAD, the failure to comply with the agreement did not warrant a complete dismissal of the charge or a reversal of the conviction. *Ramirez v. State*(1983), Ind.App., 455 N.E.2d 609, 614. To the extent that the authorities above do not dispose of this issue, we note Reed did not raise this error in his direct appeal, thus it is waived. *Rinard v. State* (1979), 271 Ind. 588, 394 N.E.2d 160. Reed has failed to demonstrate reversible error on this issue.

ISSUE II

Next, Reed argues he was unconstitutionally denied his right to counsel because the trial court failed to appoint counsel within a reasonable time. The record reveals that Reed was in federal custody at the United States Penitentiary in Terre Haute when charges were filed against him in Fulton County. Upon notice of these charges, Reed – who was still in federal custody – petitioned the Fulton County Court on February 23, 1983 for appointment of counsel. Reed was arrested and transported to Fulton County on April 27, 1983 and counsel was appointed at his initial hearing on May 9, 1983. We note Reed has failed to show in his brief how he was prejudiced by the court's failure to appoint counsel until May 9, 1983. Given these circumstances, we can not say Reed was unconstitutionally denied his right to counsel. Additionally, we note Reed refused counsel at his initial hearing and informed the court of his intent to proceed *pro se*. Reed has not shown reversible error on this issue.

ISSUE III

Next, Reed contends his right to due process and a fair trial were violated as a result of existing jail conditions. We note the only evidence presented on this issue at the post-conviction relief hearing was Reed's self-serving statements that he was denied access to materials and procedures necessary for trial preparation. Reed testified the sheriff confiscated legal materials, failed to deliver subpoenas and denied visits and phone calls. Reed also stated that conditions existing in the Fulton County Jail at the time of his pre-trial incarceration, specifically the noise level and the lack of proper lighting, hampered his ability to prepare for trial.

We note Reed raised a similar issue in his direct appeal and our supreme court resolved this issue against Reed stating:

> Appellant argues that the trial court denied him due process of law in permitting him to represent himself without, at the same time, affording him direct access to witnesses and legal facilities.
>
> After inquiring about appellant's decision to represent himself and after giving appellant extensive warnings about the dangers of self-representation, the court appointed stand-by counsel for appellant. The trial court also ordered that stand-by counsel should provide appellant with legal materials and be available to file necessary motions and other pleadings.
>
> Most of appellant's contentions concern the difficulty he had in subpoenaing and deposing witnesses. The source of his difficulty was the fact that he was incarcerated. Any problem

> appellant may have had would have been non-existent if he had used his stand-by counsel properly. The purpose of stand-by counsel is to lessen the barriers resulting from incarceration, and it provides a defendant with the opportunity to improve the quality of his self-representation. *See Engle v. State* (1984), Ind., 467 N.E.2d 712.
>
> The trial court did not deny appellant due process of law.
>
> *Reed, supra* at 187-188.

While our supreme court might not have disposed of this specific issue in Reed's direct appeal, the above quoted language is instructive. Much of Reed's argument concerns the difficulty he had in preparing for trial due to existing jail conditions. The source of his difficulty was generally, the fact that he was incarcerated. As our supreme court noted, any problem Reed may have had would have been non-existent if he had used his stand-by counsel properly. *Reed, supra*. We find Reed has failed to present reversible error on this issue.

ISSUE IV

Next, Reed contends he was denied effective assistance of appellate counsel because his counsel failed to raise certain issues in Reed's direct appeal, namely, that Reed was denied a pre-transfer hearing in violation of the IAD and that Reed was denied due process and a fair trial due to existing jail conditions.

To reverse a conviction for ineffective assistance of counsel a defendant must show that (1) his counsel's

errors were unreasonable and (2) these unreasonable errors prejudiced his defense. *Strickland v. Washington* (1984), 466 U.S. 668. Regarding Reed's first contention we note that Reed, appearing *pro se*, failed to object to the denial of his pre-transfer hearing at trial. Thus, Reed, by his own actions, waived this error for review, *Dotson, supra*. As such, his attorney's failure to raise this issue in Reed's direct appeal was not unreasonable. *Strickland, supra*.

Regarding Reed's second contention that his counsel failed to raise the question of the jail conditions hampering his trial preparation, we note Reed's problems were largely the result of his insistence on proceeding *pro se*. Additionally, in light of our supreme court's disposition of a similar issue in Reed's direct appeal, it is doubtful that Reed would have succeeded with respect to this contention. Reed has not shown that his attorney exercised unreasonable professional judgment in failing to raise these alleged errors on appeal. *Strickland, supra*.

Reed also claims his attorney was ineffective because he failed to adequately present the error that Reed was not brought to trial within 120 days after his transfer to Fulton County in violation of the IAD. However, our supreme court determined – in Reed's direct appeal – that Reed by his own actions, had failed to preserve his rights under the IAD to be brought to trial within 120 days. As Reed failed to preserve this error in the trial court, his attorney's failure to adequately present this error on appeal was not unreasonable. Reed has not shown reversible error on this issue.

ISSUE V

Finally, Reed complains the post-conviction court erred in applying the doctrines of waiver and *res judicata* in denying his petition for post-conviction relief. We disagree. A matter which would have been reviewable on direct appeal, but which was not raised at that time, is waived and a post-conviction court can judicially notice that such an issue has been waived. *Rinard, supra*. Additionally, a defendant may be barred by the doctrine of *res judicata* from raising an issue as grounds for post-conviction relief, where the defendant had unsuccessfully raised this issue on direct appeal. *Williams, supra*. Moreover, to the extent that the post-conviction court improperly applied these two doctrines, this court has attempted to address Reed's allegations on the merits. For the foregoing reasons, we affirm the post-conviction court's judgment.

ROBERTSON, J. and CONOVER, J. CONCURRING

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ORRIN SCOTT REED,	)	
	)	
Petitioner	)	Civil No.
	)	S 90-226
v.	)	
	)	
DICK CLARK; and INDIANA ATTORNEY GENERAL	)	
	)	
	)	
Respondents	)	

MEMORANDUM AND ORDER

On May 22, 1990, *pro se* petitioner, Orrin Scott Reed, filed a petition seeking relief under 28 U.S.C. § 2254.[1] The return filed on August 27, 1990, demonstrates the necessary compliance with *Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982). Six volumes of the state court record were filed, which the court has examined pursuant to the mandates of *Townsend v. Sain*, 372 U.S. 293 (1963). The court has also examined the rebuttal filed by the petitioner on September 6, 1990. Indeed, the eighteen-page rebuttal is

---

[1] Orrin Scott Reed certainly is not a stranger to the judiciary system. *See Reed v. State*, (Unpublished) 840 F.2d 920 (7th Cir. 1988); *Reed v. Morton*, (Unpublished) 808 F.2d 837 (7th Cir. 1986), *cert. denied*, 481 U.S. 1020 (1987); *United States v. Reed*, 392 F.2d 865 (7th Cir.), *cert. denied*, 393 U.S. 984 (1968); *Reed v. State*, (Unpublished) 546 N.E.2d 132 (Ind.App. 1989); *Reed v. State*, 491 N.E.2d 182 (Ind. 1986); *Reed v. Duckworth, et al.*, S 88-77; *Reed v. Duckworth*, S 86-683; *Reed v. State*, S 86-682; *Reed v. State*, S 86-444; *Reed v. Morton*, S 86-6; *Reed v. Pearson*, S 85-100; *Reed v. Rayl*, S 84-682; *Reed v. McLochlin*, S 83-423; *Reed v. United States*, S 72-139; *Reed v. United States*, S 69-117.

quite lawyerlike in both form and substance and the author is to be commended even if this court does not ultimately abide by its request.

Specifically, this court has five volumes of the record of proceedings in the Fulton Circuit Court before the Honorable Douglas B. Morton and has one volume of proceedings in the same court before the Honorable R. Alexis Clark, Special Judge.

The petitioner was convicted of theft and found to be a habitual offender. He was sentenced to a term of 34 years in prison. A direct appeal was taken to the Supreme Court of Indiana, which unanimously affirmed the aforesaid conviction in an opinion authored by Justice DeBruler and reported in *Reed v. State*, 491 N.E.2d 182 (Ind. 1986). On August 15, 1985, the petitioner filed a *pro se* petition for post-conviction relief alleging that the trial court had violated provisions of the Interstate Agreement on Detainers, and that he was denied effective assistance of counsel. On August 26, 1988, the post-conviction court denied the petition, and in an unpublished memorandum decision dated October 16, 1989, the Court of Appeals of Indiana affirmed the post-conviction court's denial. *See Reed v. State*, 546 N.E.2d 132 (Ind.App. 1989).

In the present petition, the petitioner attached a seven-page, fourteen-numbered paragraph document which is attached as Appendix "A" hereto for immediate and convenient reference. The plaintiff's petition on its face indicates that there are post-conviction proceeding [sic] pending in the state court.

However, upon examination of the opinion of Justice DeBruler in which he dealt with eight separate issues,

and paralleling the opinion to the aforesaid petition in this case, it may be presumed that the issues presented have been exhausted, since the Attorney General of Indiana does not argue otherwise. The factual setting of the case, as stated by Justice DeBruler, beginning at page 183, is as follows:

> In June, 1979, the Wabash Valley Bank foreclosed on its security interest in a 1977 Ford pick-up truck, identification number F14 SCY 89 261. Wabash Valley Bank then sold the truck to the appellate for thirteen hundred dollars in cash. In August 1979, the First National Bank of Rochester loaned M. & S. Salvage four thousand dollars; the same truck became the collateral for the loan. Appellant signed the note. The First National Bank of Rochester regarded appellant as the owner of M. & S. Salvage, and the appellant had communicated to others that he was the owner of M. & S. Salvage.
>
> On October 6, 1979, appellant reported the same truck as stolen from a K-Mart parking lot in South Bend. Auto Owner's Insurance Company paid $4,660 on the resulting loss claim. Marsha L. Reed had title to the truck and the insurance company had issued the policy in her name. Marsha Reed was actually Marsha Lee, a woman with whom appellant was living at the time. The insurance proceeds were used to pay the remaining sum of $3,101.52 to the First National Bank of Rochester on the note that appellant signed.
>
> In February 1980, state police, in executing a search warrant on the premises of M. & S. Salvage, discovered a license plate, issued to Marsha Reed for the same truck. A computer search indicated to the police that the truck had been stolen. A woman, who lived with an M. & S. Salvage employee, told the police that she saw M. & S. Salvage employees transferring parts from a blue pick-up truck to a red pick-up truck. Robert Smith, another employee, told the police that he had paid the appellant $300.00 for a frame and running gear on which he had placed his blue cab. Smith never received a certificate of title from appellant for the frame. Subsequently, Smith sold the reconstructed truck, to Shelton under the old truck's certificate of title. Police in Tennessee located Shelton's truck, and then discovered a concealed vehicle identification number on its frame. The number was F14 SCY 89 261; the same number on the frame of the truck appellant reported stolen from the K-Mart parking lot in South Bend.

Reed, 491 N.E.2d at 183-84. Justice Stewart, speaking for the Supreme Court of the United States in *Jackson v. Virginia*, 443 U.S. 307 (1979), stated:

> A judgment by a state appellate court rejecting a challenge to evidentiary sufficiency is of course entitled to deference by the federal courts, as is any judgment affirming a criminal conviction. But Congress in § 2254 has selected the federal district courts as precisely the forums that are responsible for determining whether state convictions have been secured in accord with federal constitutional law. The federal habeas corpus statute presumes the norm of a fair trial in the state court and adequate state postconviction remedies to redress possible error. See 28 U.S.C. § 2254(b), (d). What it does not presume is that these state proceedings will always be without error in the constitutional

> sense. The duty of a federal habeas corpus court to appraise a claim that constitutional error did occur – reflecting as it does the belief that the "finality" of a deprivation of liberty through the invocation of the criminal sanction is simply not to be achieved at the expense of a constitutional right – is not one that can be so lightly abjured.

Id. at 323. The Supreme Court in *Jackson* held:

> We hold that in a challenge to a conviction brought under 28 U.S.C. § 2254 – if the settled procedural prerequisites for such a claim have otherwise been satisfied – the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at trial no rational trier of fact could have found proof beyond a reasonable doubt.

Id. (footnote omitted). *See also Sumner v. Mata*, 449 U.S. 539 (1981); *Dooley v. Duckworth*, 832 F.2d 445 (7th Cir. 1987), *cert. denied*, 485 U.S. 967 (1988); *United States ex rel. Haywood v. O'Leary*, 827 F.2d 52 (7th Cir. 1987); *Bryan v. Warden, Indiana State Reformatory*, 820 F.2d 217 (7th Cir.), *cert. denied*, 484 U.S. 867 (1987); *Shepard v. Lane*, 818 F.2d 615 (7th Cir.), *cert. denied*, 484 U.S. 929 (1987); and *Perri v. Director, Department of Corrections*, 817 F.2d 448 (7th Cir.), *cert. denied*, 484 U.S. 843 (1987).

A review of the record in the light most favorable to the prosecution convinces the court that a rational trier of fact could readily have found the petitioner guilty beyond a reasonable doubt of theft.

Part II of the Justice DeBruler's opinion at page 185 deals with the issue as to the circumstantial evidence instruction. It was not an error under the law of Indiana

to refuse the petitioner's circumstantial evidence instruction and it is not a constitutional error. *See Bell v. Duckworth*, 861 F.2d 169 (7th Cir. 1988), *cert. den.*, ___ U.S. ___, 109 S.Ct. 1552 (1989). A very recent decision has pointed application. In *Williams v. Chrans*, 894 F.2d 928, 937 (7th Cir. 1990) states:

> We have jurisdiction to issue writs of habeas corpus only on the ground that the petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c), 2254(a).

The second issue presented deals with the state trial court's final instruction number 12, which is dealt with in Part III of Justice DeBruler's opinion at page 185. This is a question of state law and in no sense does the giving of the same constitute reversible error. It is a fairly stock instruction that is frequently given in criminal cases in both state and federal courts.

The next issue has to do with an issue under *Faretta v. California*, 422 U.S. 806 (1975), as it pertains to the petitioner's constitutional right under the Sixth Amendment of the Constitution of the United States to represent himself. Justice DeBruler dealt with that issue in Part VII of his opinion.

The petitioner requested that he be allowed to represent himself at a pre-trial conference held on August 1, 1983. Certainly, that right is guaranteed in Justice Stewart's opinion for the majority in *Faretta, id.* In his opinion, Justice Stewart acknowledged the hard reality that most defendants who take up that adventure do themselves

more harm than good. Judge Douglas B. Morton, confronted with the very difficult proposition of a defendant in a criminal case requesting to represent himself, inquired into the petitioner's determination to represent himself, and granted said request after giving the petitioner extensive warnings about the dangers of self-representation. A copy of that portion of the state trial transcript is attached hereto and marked Appendix "B". In addition to the warnings, Judge Morton appointed Jere Humphrey, an attorney known to this court as an able and experienced lawyer, as stand-by counsel for the petitioner. Finally, Judge Morton ordered the petitioner released on bond to prepare his case approximately three (3) weeks prior to the commencement of trial.

Upon review of the record, it is clear to this court that Judge Morton certainly did what is required under *Faretta v. California*, 422 U.S. at 806. *See Silagy v. Peters*, 905 F.2d 986 (7th Cir. 1990); *Prihoda v. McCaughtry*, No. 89-3479, slip op. (7th Cir., August 14, 1990). It is absurd that the petitioner is now arguing that Judge Morton violated his constitutional rights by letting him represent himself; especially in light of the fact that the petitioner requested that he be allowed to represent himself despite Judge Morton's warnings against self-representation. As evidenced by the record, the petitioner chose to represent himself, consequently, he may not turn around and complain that the quality of his own defense amounted to a denial of "effective assistance of counsel." *Faretta*, 422 U.S. at 834, n. 46.[2]

---

[2] To no one's surprise, the petitioner, being the experienced litigator that he was, finally realized that he was in over his head, and at the end of the trial, requested that the trial court allow stand-by counsel, Jere Humphrey, to completely take over his defense. (T.R. 1061).

The next contention of the petitioner is ineffective assistance of appellate counsel, pursuant to *Evitts v. Lucey*, 469 U.S. 387 (1985). In a challenge to counsel's performance on appeal, the presumption of effective assistance counsel will be overcome only when ignored issues are clearly stronger than those presented. *Mikel v. Thieret*, 887 F.2d 733, 736 (7th Cir. 189) (citing *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986). The petitioner has failed to demonstrate that any issue not raised by counsel was significant in any degree, either by itself or by comparison with the issues which were argued. *Mikel v. Thieret*, 887 F.2d at 736. In post-conviction proceedings, the petitioner was represented by the state public defender's office, and it is not his province to here contend the ineffective assistance of counsel during post-conviction proceedings. *See Pennsylvania v. Finley*, 481 U.S. 551 (1987). Accordingly, the petitioner's claim of ineffective assistance of appellate counsel must fail.

As he did in the Supreme Court under Issue I of Justice DeBruler's opinion at pages 184-85, the petitioner raises an issue with regard to his detainer. Justice DeBruler has very carefully delineated that issue. A copy of that portion of Justice DeBruler's opinion is attached hereto and marked Appendix "C".

Upon review of the record, this court concludes that a significant amount of the delay of trial is attributable to the many motions filed either by the petitioner or filed on the petitioner's behalf. Article VI(a) of the Interstate

Agreement on Detainers contains the following provision concerning the tolling of time periods:

> In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as a prisoner is unable to stand trial as determined by the court having jurisdiction of the matter.

18 U.S.C.App. III, § 2, Article VI(a). The Court of Appeals for the Seventh Circuit defines the underscored language to include "all those periods of delay occasioned by the defendant," and specifically, "the periods of delay occasioned by the . . . motions filed on behalf of the defendant . . . " *United States v. Nesbitt*, 852 F.2d 1502 (7th Cir. 1988); *United States v. Roy*, 830 F.2d 628, 634 (7th Cir. 1987). *See also United States v. Dawn*, 900 F.2d 1132 (7th Cir. 1990). Accordingly, the petitioner's argument that the respondents failed to comply with the time restrictions of the Interstate Agreement on Detainers must fail.

The petitioner also complains that the state trial court erred in (1) admitting into evidence a business record of a phone conversation of the petitioner, (2) refusing to admit into evidence a police report, (3) refusing to allow the petitioner to cross-examine the police officer as to the location of the confidential vehicle identification number, and (4) admitting into evidence certified copies of petitioner's prior convictions during the habitual offender proceedings.

Justice DeBruler dealt with the evidentiary rulings in Part IV, V, and VI of his opinion at pages 186 through 187. As a general proposition, this type of ruling is committed

to the discretion of state trial judges in criminal proceedings and generally does not rise to the level of federal constitutional error unless they constitute a pervasive undermining of the basic fairness of the proceedings. In this case, it isn't even a close question. These rulings were altogether within the framework of the law of Indiana and no constitutional error is here presented.

The petitioner also complains that the state trial court erred in admitting into evidence part of the trial certified copies of his prior convictions during the bifurcated habitual offender. He contends that there is no evidence establishing that he was the same individual identified in the records admitted. This court is well aware of the mandates of *Williams v. Duckworth*, 738 F.2d 828 (7th Cir. 1984), *cert. denied*, 469 U.S. 1229 (1985). *See also Jones v. Thieret*, 846 F.2d 457 (7th Cir. 1988). In these proceedings, it was established that the petitioner was the same individual as the one named in the records of prior conviction by reference to his social security number, birthdate, and a certified copy of driver's record and name. This court does not conceive that this evidence fails the test announced by Judge Swygert, speaking for the majority in a divided court in *Williams*, 724 F.2d at 1439. No constitutional error is presented with reference to this challenge to the habitual offender proceedings.

Lastly, the petitioner complains that he was not tried within 120 days of his arrival in Fulton County, in violation of the provisions of the Interstate Agreement on Detainers, Indiana Code § 35-33-10-4. Again, Justice DeBruler has carefully delineated the actual situation with reference to that issue in Part I of his opinion at pages 184-185. In any event, the petitioner has not made a

constitutional challenge to a timely trial under the constitutional mandates of *Barker v. Wingo*, 407 U.S. 514 (1972). Justice DeBruler has found that petitioner's trial was within the appropriate time frame under the law of Indiana, and there is nothing in the Constitution of the United States that causes a different conclusion. This conviction is neither undermined by reason of petitioner's being denied any so-called pre-transfer hearing.

This court has carefully reviewed the entirety of this case and has given special attention to the rebuttal filed on September 6, 1990. Much of the effort is simply one to reargue the merits of the case. It must be reminded that this court is not a court of direct review, but that 28 U.S.C § 2254 provides for a limited, narrow, but all important constitutional review of issues that have been exhausted under the mandates of such cases as *Rose v. Lundy*, 455 U.S. 509 (1982).

While the arguments are clearly and cogently presented in an orderly fashion, they are not convincing. Therefore, no basis is presented for the granting of a writ under 28 U.S.C. § 2254.

Writ **DENIED. IT IS SO ORDERED.**

DATED: September 21, 1990

/s/ Allen Sharpe
CHIEF JUDGE
NORTHERN DISTRICT OF
INDIANA

cc: Reed
Schoening
Order Book

Orrin Scott REED, Petitioner-Appellant,

v.

Dick CLARK, Superintendent, and Attorney General of Indiana, Respondents-Appellees.

No. 90-3264.

United States Court of Appeals,

Seventh Circuit.

Argued Dec. 9, 1992.

Decided Jan. 19, 1993.

Rehearing and Rehearing In Banc Denied April 27, 1993.

Before POSNER and EASTERBROOK, Circuit Judges, and WOOD, Jr., Senior Circuit Judge.

EASTERBROOK, Circuit Judge.

While serving time in federal prison, Orrin Scott Reed was indicted by Indiana on a charge of theft. Indiana asked the United States to deliver Reed for trial under the Interstate Agreement on Detainers. Indiana took custody of Reed on April 27, 1983. Article IV(c) of the IAD provides that "trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court . . . may grant any necessary or reasonable continuance." Indiana thus had until August 25, 1983, to put Reed on trial or extend the time for "good cause shown in open court". Article V(c) prescribes dismissal of the charges, with prejudice, as the consequence of excessive delay.

Reed's trial began on October 18, 1983. Reed consented to a postponement from the scheduled date of September 13, but even that date was beyond the 120 days the IAD allows. He was convicted and sentenced to 34 years' imprisonment as an habitual offender. The Supreme Court of Indiana affirmed, concluding that Reed (who was serving as his own counsel) should have alerted the trial judge during hearings on June 27 and August 1 at which the trial date was set and then postponed. *Reed v. State*, 491 N.E.2d 182, 185 (Ind. 1986). Had Reed reminded the judge of the 120-day limit during either of these hearings, instead of burying his demand in a flood of other documents, the court could have complied with the IAD's requirements. A collateral attack in state court foundered when the inferior courts treated the Supreme Court's decision as conclusive. Reed then turned to federal court, which did not mention the state court's reason and instead held that Reed's many motions accounted for "a significant amount of the delay" and thus established "good cause" under Article IV(c).

A federal court may grant collateral relief to a state prisoner "only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). That principle immediately disposes of Reed's argument that Indiana failed to comply with its own procedures for establishing his status as an habitual offender. The premise is wrong, for the Supreme Court of Indiana, whose word on questions of state law is authoritative, concluded that the state had followed its own rules. 491 N.E.2d at 188-89. But it would not matter if Indiana were out of compliance with state law. "[I]t is not the province of a federal habeas court to

reexamine state court determinations on state law questions. In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States," *Estelle v. McGuire*, ___ U.S. ___, ___, 112 S.Ct. 475, 480, 116 L.Ed.2d 385 (1991). See also, e.g., *Jones v. Thieret*, 846 F.2d 457 (7th Cir. 1988). Nothing is to be gained by insisting, as Reed does, that Indiana violated the Constitution by misapplying its laws. Metamorphosing state into constitutional law is inconsistent with many decisions. E.g., *Snowden v. Hughes*, 321 U.S. 1, 8-11, 64 S.Ct. 397, 401-02, 88 L.Ed. 497 (1944); *Archie v. Racine*, 847 F.2d 1211, 1216-18 (7th Cir. 1988) (in banc).

The Interstate Agreement on Detainers also is a state law – but because it is an interstate compact, it is a law of the United States as well. *Carchman v. Nash*, 473 U.S. 716, 719, 105 S.Ct. 3401, 3403, 87 L.Ed.2d 516 (1985); *Cuyler v. Adams*, 449 U.S. 433, 438-42, 101 S.Ct. 703, 706-09, 66 L.Ed.2d 641 (1981). Recognizing that violations of federal statutes are less likely than violations of the Constitution to lead to collateral relief, see *United States v. Timmreck*, 441 U.S. 780, 99 S.Ct. 2085, 60 L.Ed.2d 634 (1979); *Davis v. United States*, 417 U.S. 333, 94 S.Ct. 2298, 41 L.Ed.2d 109 (1974); *Hill v. United States*, 368 U.S. 424, 82 S.Ct. 468, 7 L.Ed.2d 417 (1962); *Sunal v. Large*, 332 U.S. 174, 67 S.Ct. 1588, 91 L.Ed. 1982 (1947), Reed tries to "constitutionalize" the IAD, but this maneuver works no better on the IAD than on Indiana's rules for establishing habitual-offender status. Reed contends: "[T]he IAD's mandatory language establishes a liberty interest protected by the due process clause of the Fifth and Fourteenth Amendments. The State of Indiana therefore violated Mr. Reed's

due process guarantees and his IAD right when the State failed to try him within 120 days." Yet all the IAD does is prescribe procedures: hearing before transfer, trial within 120 days of arrival, and so on. Procedures for adjudication are neither "liberty" nor "property" for constitutional purposes. *Olim v. Wakinekona*, 461 U.S. 238, 103 S.Ct. 1741, 75 L.Ed.2d 813 (1983). Statutes and rules establish liberty or property interests only to the extent they prescribe substantive rules of decision. *Kentucky Department of Corrections v. Thompson*, 490 U.S. 454, 460-63, 109 S.Ct. 1904, 1908-10, 104 L.Ed.2d 506 (1989); *Wallace v. Robinson*, 940 F.2d 243 (7th Cir. 1991) (in banc); *Doe v. Milwaukee County*, 903 F.2d 499 (7th Cir. 1990). When a state does not comply with a procedure specified in a statute or rule, it has violated that statute or rule, nothing more. Reed can succeed on this collateral attack, therefore, only by persuading us to reopen a statutory question decided adversely to him by the Supreme Court of Indiana.

Although § 2254(a) permits a court to issue a writ of habeas corpus to end custody that violates laws of the United States, the Supreme Court has yet to decide when such relief is appropriate. Indeed, the Court has yet to decide whether *Brown v. Allen*, 344 U.S. 443, 73 S.Ct. 397, 97 L.Ed.469 (1953), which authorizes reexamination of subjects addressed by state courts, applies to claims based on federal statutes. Nothing in the text of § 2254 suggests a difference between the treatment of statutory and constitutional arguments, but the Court nonetheless has been chary of equating the two, lest collateral review become a rerun of the direct appeal. *Sunal*, *Hill*, and *Timmreck* say that statutory arguments ordinarily may not

be raised collaterally. These cases were decided under 28 U.S.C. § 2255, which applies to federal prisoners, but the language of § 2254 and § 2255 is identical in all material respects, and the Court has concluded that the two are "identical in scope". *Davis*, 417 U.S. at 343, 94 S.Ct. at 2304.

Sunal and its successors hold that there is a difference between "custody in violation of the . . . laws . . . of the United States" and a violation of those laws by the state. "To show that 'the custody' – and not simply the custodian – violates the law, the prisoner must at a minimum trace the prejudicial effect of the error." *White v. Henman*, 977 F.2d 292, 295 (7th Cir.1992). *Davis* and *Hill* call on us to search for "exceptional circumstances" amounting to "a fundamental defect which inherently results in a complete miscarriage of justice". 417 U.S. at 346, 94 S.Ct. at 2305, quoting from 368 U.S. at 428, 429, 82 S.Ct. at 471, 472. Unfortunately, such formulas rarely settle concrete disputes. What is "exceptional" depends on your point of view. Some courts have concluded that the IAD does not create a "fundamental" right and that violations rarely if ever result in a "miscarriage of justice". E.G. *Fasano v. Hall*, 615 F.2d 555 (1st Cir.1980); *Edwards v. United States*, 564 F.2d 652 (2d Cir. 1977); *Kerr v. Finkbeiner*, 757 F.2d 604 (4th Cir.1985); *Metheny v. Hamby*, 835 F.2d 672 (6th Cir.1987); *Greathouse v. United States*, 655 F.2d 1032 (10th Cir.1981); *Seymore v. Alabama*, 846 F.2d 1355 (11th Cir.1988). Others have reached a contrary conclusion, pointing to the IAD's remedy; dismissal with prejudice. Surely it is a miscarriage of justice to hold in prison a person who should have been released outright, these courts believe. *United States v. Williams*, 615 F.2d 585,

589-90 (3d Cir.1980); *Gibson v. Klevenhagen*, 777 F.2d 1056 (5th Cir.1985); *Cody v. Morris*, 623 F.2d 101 (9th Cir.1980). Controversy has developed within two of these circuits as judges debate which parts of the IAD are "fundamental" and which are not. E.g., *Cooney v. Fulcomer*, 886 F.2d 41, 44 (3d Cir.1988); *Carlson v. Hong*, 707 F.2d 367, 368 (9th Cir.1983). Our circuit has not taken a position on this subject. We have recognized that the IAD is a law of the United States without delineating the circumstances under which its violation leads to collateral relief. *Webb v. Keohane*, 804 F.2d 413 (7th Cir.1986); *Esposito v. Mintz*, 726 F.2d 371 (7th Cir.1984).

Verbal analysis of "fundamental defect" or "miscarriage of justice" or "exceptional circumstances" is unlikely to get us anywhere. The meaning of "custody in violation of the . . . laws . . . of the United States" must depend in large measure on why federal courts ever reexamine decisions reached by state courts. State courts may be hostile to federal norms, and as a practical matter the Supreme Court of the United States can review only a tiny fraction of all state decisions. Constitutional rights, insulated from popular control, are most likely to engender hostility; a majority may very much wish to do things otherwise. Statutory rights are more likely to enjoy majority support, with a correspondingly reduced need for multiple layers of judges. Some states may be out of sympathy with some federal laws, but many of these laws command overwhelming contemporary support. Consider the IAD: this is a federal law by virtue of its status as an interstate compact, but it is also a law of Indiana. We have no more reason to suppose that the Supreme Court of Indiana seeks to undermine the IAD than we

have to suppose that it seeks to undermine any other law of Indiana.

The high costs of collateral review influence the proper scope of that enterprise. See *Parke v. Raley*, ___ U.S. ___, 113 S.Ct. 517, 118 L.Ed.2d 318 (1992); *Keeney v. Tamayo-Reyes*, ___ U.S. ___, 112 S.Ct. 1715, 121 L.Ed.2d 391 (1992); *Coleman v. Thompson*, ___ U.S. ___, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991); *McCleskey v. Zant*, ___ U.S. ___, 111 S.Ct. 1454, 113 L.Ed.2d 517 (1991); *Kuhlmann v. Wilson*, 477 U.S. 436, 444-55, 106 S.Ct. 2616, 2621-28, 91 L.Ed.2d 364 (1986) (plurality opinion); *Wainwright v. Sykes*, 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977); *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976); *Mackey v. United States*, 401 U.S. 667, 682-83, 91 S.Ct. 1160, 1174-75, 28 L.Ed.2d 404 (1971) (Harlan, J., concurring); *Taylor v. Gilmore*, 954 F.2d 441 (7th Cir.1992), cert. granted, ___ U.S. ___, 113 S.Ct. 52, 121 L.Ed.2d 22 (1992); *Brecht v. Abrahamson*, 944 F.2d 1363 (7th Cir.1991), cert. granted, ___ U.S. ___, 112 S.Ct. 2937, 119 L.Ed.2d 563 (1992). It would be otiose to recapitulate these costs, which underlie the limitations expressed in *Sunal*, *Hill*, *Davis*, and *Timmreck*. High costs may be worth bearing to prevent continuing unconstitutional custody, and in one other circumstance: when the confined person is innocent. *Davis*, the only decision of the Supreme Court ever to hold that a person was in "custody in violation of the . . . laws . . . of the United States", arose out of such a situation. After Davis had been convicted, the court of appeals held in a different case that the acts of which he had been accused did not constitute a crime. Imprisoning a person whose acts are not illegal, *Davis* concluded, creates "custody in violation of the . . . laws . . . of the

United States." *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), expresses a similar thought when holding that federal courts will review state convictions to ensure that a reasonable jury could have found the defendant guilty. Although *Jackson* borders on a search for violations of state law, see *Fagan v. Washington*, 942 F.2d 1155 (7th Cir.1991); *Bates v. McCaughtry*, 934 F.2d 99 (7th Cir.1991), it also emphasizes the special value attached to claims of innocence. See also *Kuhlmann* and, e.g., Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U.Chi.L.Rev. 142 (1970); Ronald J. Allen, *Mullaney v. Wilbur, the Supreme Court and the Substantive Criminal Law – An Examination of the Limits of Legitimate Intervention*, 55 Tex.L.Rev. 269 (1977).

Stone v. Powell illustrates the limits of collateral review for errors that do not themselves violate the Constitution. Although the fourth amendment forbids unreasonable searches and seizures, it does not prescribe a remedy for violations. The exclusionary rule, devised to influence the police to respect the rights of suspects, is not constitutionally obligatory – and, *Stone* holds, will not be applied on collateral review unless the state court declines to consider the defendant's arguments. One complete round of litigation on remedial contentions is enough, the Court concluded. See also *Duckworth v. Eagan*, 492 U.S. 195, 205-14, 109 S.Ct. 2875, 2881-86, 106 L.Ed.2d 166 (1989) (O'Connor, J., concurring) (concluding that claims based on *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), should be treated in the same way); *Williams v. Withrow*, 944 F.2d 284 (6th Cir.1991), cert. granted, ___ U.S. ___, 112 S.Ct. 1664, 118 L.Ed.2d 386 (1992).

Against this background, consider some possible interpretations of "custody in violation of the . . . laws . . . of the United States." Imprisonment may be said to violate the law when:

1. Any step in the process leading to conviction violates federal law; or

2. A violation of federal law in the course of prosecution should lead to dismissal with prejudice; or

3. Compliance with the federal law would prevent conviction; or

4. The state has failed to entertain or resolve a properly raised defense based on federal law; or

5. An innocent person has been convicted.

Davis and *Jackson* hold that condition (5), innocence, requires collateral relief. See also *Kuhlmann* and, e.g., *Sawyer v. Whitley*, ___ U.S. ___, 112 S.Ct. 2514, 120 L.Ed.2d 269 (1992). *Stone* adds that condition (4) also calls for collateral review. Although the Supreme Court has yet to consider condition (3), a federal law that makes it *impossible* for the state to convict a particular defendant also affords a strong foundation for relief. In such cases a state may be tempted to evade its obligations under the Supremacy Clause. Collateral review vindicates the federal interest at little cost to (legitimate) state interests – for by hypothesis the state has no entitlement to imprison the accused. But of course Reed's custody is not illegal in this sense. Compliance with the IAD would not have foreclosed his conviction. Had Indiana put Reed to trial

within 120 days of his transfer from federal prison, everything would have proceeded as it did. Reed does not contend that vital evidence fell into the prosecutor's hands (or slipped through his own fingers) between August 26 and September 19, 1983.

Only conditions (1) and (2) hold out hope for Reed. By now it should be clear that condition (1) does not support collateral review. *Sunal, Hill, Timmreck,* and *Stone* would have come out the other way if an error of federal law during the proceedings leading to conviction automatically yields "custody in violation of the . . . laws . . . of the United States." But for causation is not enough. Neither is condition (2). That dismissal with prejudice is the *remedy* for a violation tells us nothing about the question whether the federal court may inquire into the *existence* of a violation. Statutes may call for dismissal the better to induce compliance; beefing up the remedy does not imply the need for extra layers of review. Otherwise strong remedies would get stronger, and weak remedies would stay weak. Dismissal with prejudice is appropriate for both actual innocence and commencing the prosecution one day after the expiration of the statute of limitations, but only the former justifies sequential review in state and federal court. Conditions (2) and (3) examine the same subject at different times: condition (3) asks whether the federal norm makes conviction impossible *ex ante,* while condition (2) asks whether the federal norm calls for dismissal *ex post* if the state violates a federal rule. Condition (3) looks at the quality of the substantive rule, and condition (2) at the remedy. Collateral review should be used to enforce the

important substantive rules, which determine who may and may not be convicted.

All of this leads to the conclusion that *Stone v. Powell* establishes the proper framework for evaluating claims under the IAD. Accord, Note, *Federal Habeas Corpus Review of Nonconstitutional Errors: The Cognizability of Violations of the Interstate Agreement on Detainers,* 83 Colum.L.Rev. 975 (1983). Condition (4), the domain of *Stone,* is the only relevant one. The IAD does not define factual or legal guilt, so condition (5) drops out, and does not put insuperable hurdles in the way of conviction, so condition (3) also falls away. Unless a state fails to entertain and resolve claims under the IAD, collateral review is unavailable in federal court.

Indiana entertained and resolved Reed's contention that the trial began too late. It concluded that Reed had not alerted the trial judge to the potential problem either during the hearing at which the trial date was set or during the hearing at which the date was postponed. During the pretrial conference of August 1, 1983, Reed presented several arguments based on the IAD, including claims that the federal government should have held a hearing before turning him over to the state and that his treatment in Indiana fell short of the state's obligations under Art. V(d) and (h). Reed did not mention the fact that the date set for trial would fall outside the 120 days allowed by Art. IV(c). Courts often require litigants to flag important issues orally rather than bury vital (and easily addressed) problems in reams of paper, as Reed did. E.g., Fed.R.Crim.P. 30 (requiring a distinct objection to jury instructions); cf. Fed.R.Crim.P. 12(b) (a district judge may require motions to be made orally). It would

not have been difficult for the judge to advance the date of trial or make a finding on the record of good cause, either of which would have satisfied Art. IV(c). Because the subject never came up, however, the trial judge overlooked the problem. Whether or not the approach of the Supreme Court of Indiana would be an independent and adequate procedural ground in support of the judgment (Respondents have not invoked *Wainwright v. Sykes*, although they cite several state cases dealing with waiver), it shows that Indiana entertained Reed's contentions without hostility to the federal statute.

On one issue, however, the state court was silent. Reed contends that the failure of the federal Bureau of Prisons to give him a hearing before transferring custody to Indiana violates Art. IV(a) of the IAD. Silence may permit review under *Stone*. Reed relies principally on *Cuyler*, 449 U.S. at 443-50, 101 S.Ct. at 709-12, which held that Art. IV requires a hearing before one state may turn a prisoner over to another. The warden of the penitentiary at Terre Haute denied Reed's request, explaining: "It is the Bureau of Prison's [sic] position that inmates in Federal Custody are not entitled to the pre-transfer hearing that is referenced by *Cuyler v. Adams*." Transfer under Art. IV is a substitute for extradition. The opportunity for pre-transfer review permits a prisoner to ask the governor to decline the request for transfer. A prisoner in federal custody has no such avenue of relief. Reed does not point to any language in the IAD or any decision by a federal court requiring the federal government to extend the sort of opportunity that states traditionally have afforded in extradition proceedings. To create a parallel opportunity by implication would be to create a new rule

of law, which may not properly be done in collateral proceedings. *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989). Once again, therefore, we do not address the substance of Reed's contentions.

Our opinion has addressed the arguments of Reed's appointed counsel. By a separate brief, Reed personally advances numerous additional contentions. We have considered all of these, none of which requires discussion.

AFFIRMED.

ON PETITION FOR REHEARING

Decided April 27, 1993.

Before POSNER and EASTERBROOK, Circuit Judges, and WOOD, Jr., Senior Circuit Judge.

A petition for rehearing was filed by the petitioner in this case. All of the judges on the panel voted to deny rehearing, and the petition is accordingly denied.

A judge in active service called for a vote on the suggestion of rehearing in banc, which failed to obtain a majority. Judges Cudahy and Ripple voted for rehearing in banc.

RIPPLE, Circuit Judge, dissenting from the denial of rehearing en banc.

The panel opinion in this case is a thoughtful attempt to deal with a difficult problem upon which the circuits are in disarray and upon which the Supreme Court has given little firm guidance. *See Metheny v. Hamby*, 488 U.S. 913, 109 S.Ct. 270, 102 L.Ed.2d 258 (1988) (White, J., dissenting from the denial of certiorari). As the state quite frankly points out in its reply to the petition for rehearing, this opinion sets us on a different course from that adopted by the other circuits. Indeed, the panel gives rather short shrift to the efforts of the other circuits by dismissing their approaches as "unlikely to get us anywhere." *Reed v. Clark*, 984 F.2d 209, 211 (7th Cir. 1993).

Before we add to the disarray among the circuits, the matter ought to be heard in banc. This course is especially advisable in light of the tension between this holding and the court's previous opinion in *Neville v. Cavanagh*, 611 F.2d 673 (7th Cir.1979), *cert. denied*, 446 U.S. 908, 100 S.Ct.

1834, 64 L.Ed.2d 260 (1980). In that case, this court refused, on comity grounds, to grant a habeas petition by a prisoner who unsuccessfully had argued an IAD violation before the Illinois Supreme Court in an attempt to block pending criminal charges. In denying the relief sought, this court stated:

> In light of the fact that Neville does seek to derail a pending state criminal proceeding, and that he may be acquitted at trial, we believe the district court was correct in denying the petition for a writ of habeas corpus at this time. *We note that this decision does not bar federal consideration of Neville's claim. Rather, it merely delays such consideration until "a time when federal jurisdiction will not seriously disrupt state judicial processes."*

Id. at 676 (footnotes omitted) (emphasis added). Under *Reed*, *Neville* cannot stand. Here the panel specifically holds:

> - Unless a state fails to entertain and resolve claims under the IAD, collateral review is unavailable in federal court.

Op. at 213. *Neville*, then, clearly was a case in which the state court resolved the IAD claim against the prisoner. The court did not dismiss the habeas petition on jurisdictional grounds but held that, until a trial on the merits of the underlying indictment, the federal court would delay adjudication of the habeas petition. *Neville*, 611 F.2d at 676.

Also of note in *Neville* is the dissenting opinion of Judge Cudahy. He wrote:

> It would be extraordinarily useful in the instant case for a federal court to promptly consider

> and construe this interstate detainer compact because this compact attempts to provide a *nationally uniform* method of transferring federal prisoners to state courts. Such an objective can be realized only by uniform interpretation of the compact.

Id. at 678 (Cudahy, J., dissenting) (footnotes omitted). This need for uniformity in the interpretation of an interstate compact is a consideration that receives little attention in the circuit cases. Perhaps it is a factor that ought to be weighted a great deal more heavily in determining whether a "statutory claim" is cognizable on habeas.

SUPREME COURT OF THE UNITED STATES

No. 93-5418

ORRIN S. REED,
PETITIONER,

v.

DICK CLARK, Superintendent,
Indiana State Prison, et al.,
RESPONDENT.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted.

November 8, 1993
